(13)

No. 93-1660-CSY
Status: GRANTED

Title: Arizona, Petitioner
v.
Isaac Evans

Docketed:
April 13, 1994

Court: Supreme Court of Arizona

Counsel for petitioner: Grant,Gerald R.

Counsel for respondent: Kemper,James H., Carrigan,Carol A.

Ptn due & mld 4-13-94, see statement of mlg.

Entry	Date	Note	Proceedings and Orders
1	Apr 13 1994	G	Petition for writ of certiorari filed.
2	May 4 1994		DISTRIBUTED. May 20, 1994 (Page 13)
3	May 4 1994	G	Motion of respondent for leave to proceed in forma pauperis without an affidavit of indigency executed by respondent filed.
5	May 23 1994		REDISTRIBUTED. May 27, 1994 (Page 13)
6	May 31 1994		Motion of respondent for leave to proceed in forma pauperis without an affidavit of indigency executed by respondent GRANTED.
7	May 31 1994		Petition GRANTED.
			**********
8	Jun 17 1994	G	Motion of respondent for appointment of counsel filed.
9	Jun 20 1994		DISTRIBUTED. June 24, 1994 (Page 23)
10	Jun 27 1994		Motion for appointment of counsel GRANTED and it is ordered that Carol A. Carrigan, Esq., of Phoenix, Arizona, is appointed to serve as counsel for the respondent in this case.
11	Jul 8 1994		Brief amici curiae of Americans for Effective Law Enforcement, Inc., et al. filed.
13	Jul 14 1994		Order extending time to file brief of petitioner on the merits until July 22, 1994.
14	Jul 21 1994		Order further extending time to file brief of petitioner on the merits until July 29, 1994.
15	Jul 29 1994		Brief of petitioner filed.
16	Jul 29 1994		Joint appendix filed.
17	Jul 29 1994		Brief amici curiae of Washington Legal Foundation, et al. filed.
18	Jul 29 1994		Brief amicus curiae of United States filed.
19	Jul 29 1994		Brief amici curiae of Florida, et al. filed.
20	Aug 9 1994	D	Motion of Washington Legal Foundation, et al. for leave to participate in oral argument as amici curiae and for divided argument filed.
21	Aug 15 1994		Record filed.
		*	Certified partial proceedings Arizona Supreme Court and Arizona Court of Appeals, Division One.
22	Aug 23 1994		Brief of respondent Issac Evans filed.
23	Aug 26 1994		Brief amici curiae of American Civil Liberties Union, et al. filed.
24	Aug 29 1994		Brief amicus curiae of National Association of Criminal Defense Lawyers filed.
25	Sep 22 1994		Reply brief of petitioner filed.

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No. 93-1660-CSY

Entry	Date	Note	Proceedings and Orders
26	Sep 26 1994		Motion of Washington Legal Foundation, et al. for leave to participate in oral argument as amici curiae and for divided argument DENIED.
27	Sep 30 1994		CIRCULATED.
28	Oct 7 1994		SET FOR ARGUMENT WEDNESDAY, DECEMBER 7, 1994. (2ND CASE).
29	Dec 7 1994		ARGUED.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

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QUESTION PRESENTED

Where evidence has been seized incident to an arrest based upon a police computer record of an open warrant that had actually been quashed 17 days earlier, does the exclusionary rule require suppression of the evidence regardless of whether police personnel or court personnel were responsible for the quashed warrant's continued presence in the police computer record?

PARTIES

The caption contains the names of all the parties below.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

Petitioner, the State of Arizona, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Arizona.

OPINIONS BELOW

The reported opinion of the Supreme Court of Arizona, State v. Evans, ___ Ariz. ___, 866 P.2d 869 (1994), affirming the grant of Respondent's motion to suppress, is reproduced in Appendix A.

The reported opinion of the Arizona Court of Appeals, State v. Evans, 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992), reversing the trial court's grant of Respondent's motion to suppress, is reproduced in Appendix B.

STATEMENT OF JURISDICTION

The opinion of the Supreme Court of Arizona was filed on January 13, 1994. This petition is filed within 90 days of that judgment as required by Rule 13 of the Rules of The Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The State charged Respondent Isaac Evans with possession of marijuana, a class 6 felony. Prior to trial, Evans filed a motion to suppress the marijuana, arguing that it was the fruit of an unlawful arrest.

On April 15, 1991, the trial court conducted an evidentiary hearing on the motion to suppress. Officer Bryan Sargent of the Phoenix Police Department testified

that on January 5, 1991, at approximately 6:30 p.m., he was parked on Washington Street in front of the main police station when he saw a car travelling the wrong way on Washington, which is a one-way street. (R.T. of Apr.15, 1991, at 5-6.) Officer Smith turned on his overhead lights, made a U-turn, and stopped the car. (Id., at 6.)

Both the driver of the car, Evans, and Officer Sargent got out of their vehicles and walked towards each other. (Id., at 6-7.) The officer asked Evans for his driver's license, and Evans replied that he did not have one because it had been suspended. (Id., at 7.) Officer Sargent then obtained Evans' name, and ran the name on the computer in his patrol car. (Id.)

The computer search showed that Evans' license had been suspended. (Id., at 8.) The search also showed that Evans had an

outstanding misdemeanor warrant for his arrest, although it did not show what the warrant was for. (Id.) Officer Sargent would not have arrested Evans for driving on a suspended license, but decided to arrest him because of the warrant. (Id., at 13.)

Officer Sargent went back to Evans and told him he was under arrest. (Id., at 8.) Evans' left hand was clenched into a fist, making it difficult for the officer to handcuff him. (Id., at 9.) The officer asked Evans twice to relax his hand so that he could put the handcuffs on. (Id.) When Evans finally opened his left hand, Officer Sargent saw a handrolled cigarette fall to the ground. (Id.)

While Officer Sargent put Evans in the back seat of his patrol car, the officer's partner picked up the cigarette. (Id., at 9-10.) After looking at the cigarette and

noticing that it smelled like marijuana, Officer Sargent searched Evans' car. (Id., at 10.) He found a baggie of marijuana under the passenger seat. (Id., at 11.) He also found rolling papers and marijuana residue in the purse of the woman who had been sitting in the passenger seat. (Id., at 11.)

After the arrest, Officer Sargent contacted his I-Bureau about the warrant, and was told that the warrant was still good. (Id., at 11-12.)

The State also called Frances Crossman, the chief clerk of the East Phoenix Number One Justice Court. Ms. Crossman brought records from the justice court regarding the warrant on Evans. (Id., at 16.) She testified that Evans had several traffic tickets and failed to appear in the justice court on December 12, 1990. (Id., at 17-18.) Before issuing a bench warrant, the

clerk checked to make sure that Evans was not in custody elsewhere. (Id., at 18.) Upon learning that Evans had been released on December 5, 1990, a bench warrant was issued on December 13, 1990. (Id., at 18-19.) On December 19, 1990, Evans appeared before a pro tem judge, who released him on his own recognizance and quashed the warrant. (Id., at 19.)

Ms. Crossman testified that the justice court's standard procedure for quashing a warrant includes calling the warrants section of the Maricopa County Sheriff's Office and advising them that the warrant had been quashed. (Id., at 19, 25.) The clerk making that call then makes a note that the call has been made. (Id., at 19.) The note also indicates the person at the Sheriff's Office to whom the clerk spoke. (Id.)

Evans' justice court file contained no

note indicating that the Sheriff's Office had been called about the quashing of the warrant. (Id., at 19, 22.) Ms. Crossman concluded the call had not been made. (Id., at 19, 21.) She also noted that Evans' case was unusual because it involved a pro tem judge who had not made the notation in the file regarding the quashing of the warrant that the justice of the peace would have made. (Id., at 23, 25-26.) After learning that the Sheriff's Office had shown that Evans' warrant was outstanding after the justice court had quashed it, Ms. Crossman searched all the files to make sure that no other errors had been made. (Id., at 27.) This search discovered that on the same day that Evans' warrant had been quashed, the files in three other cases in which warrants had been quashed contained no notes showing that the Sheriff's Office had been informed. (Id., at 27-28.)

The State also called Emily Luna, a records clerk with the Maricopa County Sheriff's Office. She testified about the Sheriff's Office procedure when it receives a call that a warrant has been quashed. The person receiving the call gets the "recall warrants list," and notes the date and time that the call was received, the name of the person making the call, and the court that the call is from. (Id., at 30.) The Sheriff's Office also asks for the first, last and middle names of the person named in the warrant, his date of birth, and the warrant number and the date it was issued. (Id.) The Sheriff's Office then pulls the active file and verifies that the information received matches that in the file. (Id.) It then makes notations in the active file, and makes an entry on the computer to clear the warrant from the system. (Id., at 30-31, 36.) After clearing

the warrant, the Sheriff's Office runs a warrant check to make sure the quashed warrant has been cleared. (Id., at 31.)

Ms. Luna checked the Sheriff's Office records regarding the warrant on Evans. (Id.) The records did not show that a call was ever received quashing that warrant. (Id., at 34.)

The defense presented no evidence at the suppression hearing. (Id., at 38.) After hearing argument from the attorneys, the trial court granted the motion to suppress. (Id., at 46.)

The State appealed from this ruling. On May 19, 1992, Division One of the Arizona Court of Appeals reversed. The court of appeals found that the police officers' conduct was objectively reasonable, that the clerical error in failing to note that the warrant had been quashed was outside the control of the Phoenix Police Department,

and that therefore the purpose of the exclusionary rule would not be served by suppressing the marijuana. The court of appeals also held that Arizona's "good faith exception" statute (Ariz. Rev. Stat. Ann §13-3925) applied and required reversal of the trial court's suppression order. One member of the three-judge court of appeals panel dissented.

Evans then filed a petition for review by the Arizona Supreme Court. The supreme court took review and on January 13, 1994, filed an opinion vacating the court of appeals' decision. The supreme court held that even if the responsibility for the computer error rested with the justice court, the exclusionary rule applied and required suppression of the evidence.

Justice Frederick J. Martone dissented, disagreeing with the majority's conclusion that the source of the computer error was

irrelevant. He found that the exclusionary rule is properly limited to police misconduct, and therefore would have remanded so that specific findings could be made regarding the source of the computer error.

REASONS FOR GRANTING THE WRIT

In this case, a police officer made a valid traffic stop of Evans, who was driving the wrong way on a one-way street. Evans then admitted a second violation of the law when he told the officer that his driver's license had been suspended. By using the computer in his patrol car, the officer confirmed that Evans' driver's license was indeed suspended. He also learned from that computer check that there was an outstanding warrant for Evans' arrest. The warrant was present in the computer system because the Maricopa County Sheriff's Office had placed it there. The Maricopa County Sheriff's Office placed

the warrant in the computer system because of information it had received from the issuing justice court. Based on the available information regarding the warrant, the officer informed Evans of the warrant and arrested him. Evans said nothing to the officer regarding the quashing of the warrant. Incident to Evans' arrest, the officer seized marijuana. The officer even checked with his own police department's I-Bureau after the arrest, and was again told that there was an outstanding warrant for Evans' arrest.

Although Officer Sargent did nothing wrong, both the trial court and the Arizona Supreme Court penalized him by applying the exclusionary rule and suppressing the marijuana he seized. They did this because, in reality, the warrant had been quashed 23 days earlier, even though the arresting officer had no way of knowing this.

Evidence presented at the hearing on the motion to suppress strongly suggested that the justice court was to blame for the warrant's continued presence in the computer system after it had been quashed. The chief clerk of the justice court testified that the justice of the peace customarily made a notation in the file when he quashed a warrant. This notation cued the justice court personnel to call the Maricopa County Sheriff's Office and tell them that the warrant had been quashed. Evans' warrant, however, was quashed by a pro tem justice of the peace, who did not make the customary notation in the file. A search of the justice court files revealed that the same pro tem justice of the peace had quashed three other warrants on the same day as Evans', and that all three of those warrants remained in the computer system. Both the trial court and the Arizona Supreme Court

found that even if the justice court was responsible for the error, the exclusionary rule required suppression of the marijuana.

This Court should grant this petition for writ of certiorari because the Arizona Supreme Court has decided a federal question (the application of the exclusionary rule) in a way that conflicts with applicable decisions of this Court. The Arizona Supreme Court based its application of the exclusionary rule on the fact that a Fourth Amendment violation occurred: Evans was unlawfully arrested on a warrant that had been quashed. This Court, however, has held that because the exclusionary rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, and not a personal constitutional right of the party aggrieved, the exclusionary sanction need not be imposed every time Fourth Amendment

rights are violated by police conduct. United States v. Leon, 468 U.S. 897, 906 (1984).

The Arizona Supreme Court also held that it was irrelevant whether police officers were to blame for the error that caused the unlawful arrest. This conflicts with this Court's decision in United States v. Leon, where it stated that the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates, and that therefore penalizing an officer for a magistrate's error cannot logically contribute to the deterrence of Fourth Amendment violations. Id., 468 U.S. at 916, 921. See also Michigan v. Tucker, 417 U.S. 433, 446 (1974); United States v. Calandra, 414 U.S. 338, 347 (1974).

This Court should also grant this petition for writ of certiorari because

state and federal appellate courts have issued conflicting decisions on this issue. Some courts have followed United States v. Leon and its good faith exception doctrine, and found that the purpose of the exclusionary rule is not served by suppressing evidence seized under circumstances similar to those present in this case. See United States v. De Leon-Reyna, 930 F.2d 396, 401 (5th Cir. 1991) (warrantless arrest upheld where officer relied on mistaken license plate information); United States v. Towne, 870 F.2d 880, 884-85 (2d. Cir.), cert. denied, 490 U.S. 1101 (1989) (arrest upheld where officer relied on warrant improperly kept in "active" NCIC files); Durio v. State, 807 S.W.2d 876, 877-78 (Tex. Ct. App. 1991) (arrest and seizure upheld where officers relied on warrants later determined to have been previously executed but not

stricken). Other courts have applied the exclusionary rule in these same types of circumstances. See State v. Peterson, 171 Ariz. 333, 830 P.2d 854 (Ct. App. 1991) (arrest based on quashed 5-year-old warrant that had been mistakenly reentered in computer system); People v. Mourecek, 208 Ill. App. 3d 87, 566 N.E.2d 841 (1991) (arrest based on radio information regarding warrant quashed 30 days earlier); Ott v. State, 325 Md. 206, 600 A.2d 111, cert. denied, ___ U.S. ___, 113 S.Ct. 295, 121 L.Ed.2d 219 (1992) (arrest based on computer information regarding warrant satisfied 7 days earlier). By granting certiorari in this case, this Court can resolve these conflicts and provide guidance to the lower courts.

This Court has noted that indiscriminate application of the exclusionary rule may well generate disrespect for the law and

administration of justice. United States v. Leon, 468 U.S. at 908. Applying the exclusionary rule in this case does not serve the rule's purpose and contributes to feelings of disrespect for the law. Officer Sargent did nothing wrong. The evidence strongly suggests that a non-police agency was to blame for the error that led to Evans' arrest. The Arizona Supreme Court, however, found these factors unimportant and applied the exclusionary rule despite the absence of any deterrent effect on individual law enforcement officers. This Court should correct that error.

CONCLUSION

For the reasons stated, this Court should issue a writ of certiorari to review the judgment of the Supreme Court of Arizona.

Respectfully submitted,

RICHARD M. ROMLEY
Maricopa County Attorney

GERALD R. GRANT
Chief of Appeals Bureau
(Counsel of Record)

Attorneys for Petitioner

April 14, 1994

APPENDIX

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APPENDIX A

STATE OF ARIZONA

v.

ISAAC EVANS.

Supreme Court of Arizona.

January 13, 1994.

ZLAKET, Justice.

The court of appeals, with one judge dissenting, held that the trial court abused its discretion in granting defendant's motion to suppress. State v. Evans, 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992). We disagree and vacate the appellate court's opinion.

Defendant was stopped for a traffic violation on January 5, 1991. At the time, he had a suspended driver's license. Neither of these offenses, however, precipitated his eventual arrest. The police officer testified at the suppression hearing that he would not have placed defendant under arrest if a computerized records check had not indicated the existence of an outstanding misdemeanor arrest warrant in his name.

While making the arrest, the officer found part of a marijuana cigarette on defendant's person. A subsequent search of his vehicle revealed a bag of marijuana hidden under the passenger seat. Defendant was charged with possession, a class 6 felony.

The computerized record was in error. In fact, the arrest warrant had been quashed by the issuing justice court several weeks earlier. For some reason, it was not

expunged from the computer. At the suppression hearing, there was conflicting evidence concerning whether this mistake was caused by the court staff or law enforcement employees. The trial court apparently concluded that it made little difference who was at fault. Relying on State v. Greene, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), which applied the exclusionary rule where police personnel were negligent in maintaining computer records, the judge granted defendant's motion to suppress the evidence seized during the arrest. Thereafter, the state dismissed the charges without prejudice and brought this appeal.

The court of appeals ruled that the evidence should not have been suppressed. The majority concluded that Greene did not apply because the mistake here, more probably than not, was made by justice court employees

instead of law enforcement personnel. The appeals court relied primarily on Michigan v. Tucker, 417 U.S. 433, 94 S. Ct. 2357 (1974) and United States v. Leon, 468 U.S. 897, 104 S. Ct. 3430 (1984) in holding that "the exclusionary rule is intended to deter police misconduct and not to punish errors of judges and magistrates," and therefore should not have been utilized in this case. 172 Ariz. at 317, 836 P.2d at 1027.[1]

We do not agree that the trial court abused its discretion under the facts presented. We are unable to follow the lead of the court of appeals in dismissing

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[1] It is unnecessary to analyze here the purposes to be served by the exclusionary rule. We note only that deterrence of police misconduct is but one of the reasons that have been advanced in support of its use. See, e.g., Mapp v. Ohio, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961); Weeks v. United States, 232 U.S. 383, 392, 34 S. Ct. 341, 344 (1914).

conflicting inferences raised by evidence on the issue of whether fault rested with the justice court, the police, or both. See id. at 316 n.1, 836 P.2d at 1026 n.1. Testimony at the suppression hearing failed to clearly establish whether a telephone call from the court to the police, advising that the warrant had been quashed, was made but not entered in the record, or was never made at all. The trial judge was concerned about this gap in the proof, as evidenced by his questions during the hearing. He ultimately made no express finding with respect to responsibility for the error, apparently concluding that it did not matter. But even assuming, as did the appellate court majority, that responsibility for the error rested with the justice court, it does not follow that the exclusionary rule should be inapplicable to these facts.

Tucker is of little value here. In that case, the court was dealing with alleged violations of the 5th, 6th and 14th amendments arising from the failure of police to have given "Miranda warnings' as part of an interrogation that antedated the decision in Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

Leon is also not helpful. There, officers obtained evidence on the basis of a facially valid search warrant issued by a neutral magistrate. The warrant was later held invalid because it had been issued on an insufficient showing of probable cause. Such a situation is distinguishable from one like this, where no warrant at all was in existence at the time of the arrest. See State v. Peterson, 171 Ariz. 333, 830 P.2d 854 (Ct. App. 1991), cert. denied, 113 S. Ct. 465 (1992); see also 1 Wayne R. LaFave, Search and Seizure § 1.3(g) at 77 (1986).

This warrantless arrest, based entirely as it was on an erroneous computer entry, was plainly illegal.

The state argues that the police could have arrested defendant for various traffic violations, and this inevitably would have resulted in the discovery of the contraband. The record clearly establishes, however, that no arrest would have occurred in the absence of the flawed computer record. At most, defendant would have received a traffic citation.

The "good faith" analysis advanced by the state is of questionable application here. This case is not about the motives of the police. The fact that the arresting officer acted in good faith is irrelevant. 2 Wayne R. LaFave, Search and Seizure § 3.5(d) at 24 (1986); see also People v. Fields, 785 P.2d 611 (Colo. 1990). The arrest was not the result of "a reasonable

judgmental error" concerning facts which might constitute probable cause. A.R.S. § 13-3925(C)(1). It was the result of negligent record keeping. Whether the erroneous computer record was the fault of police or justice court personnel should be of no consequence even though, as we have noted, evidence on this point was by no means as clear as the state now suggests.

This is also not a cause involving a mere "technical violation." A.R.S. § 13-3925(C)(2). Defendant was arrested on the basis of a nonexistent warrant, not one that was "later invalidated due to a good faith mistake." Id. See also United States v. Whiting, 781 F.2d 692 (9th Cir. 1986) (summarily rejecting extension of Leon's good faith exception to warrantless searches).

We cannot support the distinction drawn by the court of appeals and the dissent

between clerical errors committed by law enforcement personnel and similar mistakes by court employees. We are concerned here with the performance of purely ministerial functions, not the exercise of judicial discretion. While it may be inappropriate to invoke the exclusionary rule where a magistrate has issued a facially valid warrant (a discretionary judicial function) based on an erroneous evaluation of the facts, the law, or both, Leon, 468 U.S. 897, 104 S. Ct. 3430 (1984), it is useful and proper to do so where negligent record keeping (a purely clerical function) results in an unlawful arrest. Such an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system.

The dissent laments the "high costs" of the exclusionary rule, and suggests that its application here is "purposeless" and

provides "no offsetting benefits." Such an assertion ignores the fact that arrest warrants result in a denial of human liberty, and are therefore among the most important of legal documents. It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. As automation increasingly invades modern life, the potential for Orwellian mischief grows. Under such circumstances, the exclusionary rule is a "cost" we cannot afford to be without.[2]

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[2] In fact, the evidence suggests that this cost is insubstantial. As one commentator notes, "[t]o date, the most careful and balanced assessment of all available empirical data shows 'that the general level of the rules's effects on criminal prosecutions is marginal at most.'" 1 Wayne R. LaFave, Search and Seizure § 1.3(c) at 52 (1986) (quoting T. Davies, A Hard Look at What We Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other

Even assuming that deterrence is the principal reason for application of the exclusionary rule, we disagree with the court of appeals that such a purpose would not be served where carelessness by a court clerk results in an unlawful arrest. It also seems to us an anomalous rule, indeed, that would prohibit the use of evidence illegally seized pursuant to the clerical error of a police department clerk, but would permit it if the same mistake was made instead by a court clerk.

We hold that the trial judge did not abuse its discretion, and we vacate the court of appeals' opinion.

MARTONE, Justice, dissenting.

Studies of "Lost" Arrests, 1983 Am. B. Found. Research J. 611, 622); see also Peter F. Nardulli, The Societal Cost of the Exclusionary Rule: An Empirical Assessment, 1983 Am. B. Found. Research J. 585, 606-07; Peter F. Nardulli, The Societal Costs of the Exclusionary Rule Revisited, 1987 U. Ill. L. Rev. 223, 238-39.

The court concludes that "[w]hether the erroneous computer record was the fault of police or justice court personnel should be of no consequence . . . ." Ante, at 5. Thus today the court holds that the exclusionary rule serves to deter judicial error as well as police misconduct. This proposition is directly contrary to United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984). Because I cannot agree with the court's expansion of the exclusionary rule, I dissent.

The court assumes that the exclusionary rule applies to all unlawful searches. It does not. The exclusionary rule is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." United States v. Calandra, 414 U.S. 338, 348, 94 S. Ct. 613, 620 (1972).

Its application "has been restricted to those areas where its remedial objectives are thought most efficaciously served." State v. Atwood, 171 Ariz. 576, 667, 832 P.2d 593, 684 (1992), quoting Calandra, 414 U.S. at 348, 94 S. Ct. at 620. Specifically, "the rule's primary purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." Calandra, 414 U.S. at 347, 94 S. Ct. at 619-20 (emphasis added). Thus the range of application of the exclusionary rule is narrower than the range of unlawful searches.

In United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 (1984), the Court considered whether the exclusionary rule served to deter judicial as well as police misconduct. In concluding that it did not, the Court stated:

> Judges and magistrates are not adjuncts to the law enforcement team; as neutral judicial officers, they have no stake in the outcome of particular criminal prosecutions. The threat of exclusion thus cannot be expected significantly to deter them. Imposition of the exclusionary sanction is not necessary meaningfully to inform judicial officers of their errors, and we cannot conclude that admitting evidence obtained pursuant to a warrant while at the same time declaring that the warrant was somehow defective will in any way reduce judicial officers' professional incentives to comply with the Fourth Amendment, encourage them to repeat their mistakes, or lead to the granting of all colorable warrant requests.

Leon, 468 U.S. at 917, 104 S. Ct. at 3417-18. The Court held the exclusionary rule inapplicable when police officers act in objectively reasonable good faith on a warrant later invalidated due to judicial error because "[p]enalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." Id. at 921, 104 S. Ct. at 3419.

This case falls squarely within the rule of Leon. The police officer who stopped defendant found an outstanding warrant for defendant's arrest when he ran a customary computer check. He arrested defendant and found marijuana during the search incident to the arrest. The computer gave no indication that the warrant was invalid. The evidence suggests that a justice court clerk failed to contact police department employees to inform them that the warrant had in fact been quashed. The police department was not responsible for the error. The officer arrested defendant in good faith on a facially valid warrant. Indeed, not even the court suggests that the police officer could have done anything other than arrest the defendant. It would have been misfeasance to ignore the warrant.

The court believes that Leon is distinguishable because the officers in

Leon relied on a facially valid warrant while here "no warrant at all was in existence at the time of the arrest." Ante, at 5. But the officer relied upon facially valid computer information. When the computer shows an outstanding arrest warrant, the officer is expected to make an arrest. He is in the same position as one who holds an arrest warrant in his hand. It makes no difference whether, after issuance, a warrant is quashed or otherwise invalid. In both cases the warrant is without effect, yet it appears to the officer to be facially valid. In either case, Leon controls.

The court also concludes that applying the exclusionary rule is proper here because a court employee, and not a judge, committed error. But what does it matter? The exclusionary rule applies to police misconduct, not judicial department error.

Finally, the court concludes that the police cannot advance a "good faith" argument because the arrest was not a "reasonable judgmental error" as defined in A.R.S. § 13-3925. Section 13-3925 is wholly inapplicable to this case. It expressly addresses the exclusion of evidence "because of the conduct of a peace officer in obtaining the evidence." A.R.S. § 13-3925(A) (emphasis added). Here, the conduct of the arresting officer is not challenged. Moreover, § 13-3925 was added to the criminal code in 1982 to provide a statutory good faith exception to the exclusionary rule. The United States Supreme Court sanctioned the good faith exception in 1984 when it decided Leon. After Leon, we held "that the exclusionary rule to be applied as a matter of state law is no broader than the federal rule." State v. Bolt, 142 Ariz. 260, 269, 689 P.2d 519, 528 (1984). Because

our exclusionary rule cannot be narrower than the federal rule, and because we have held it to be no broader, we do not read into § 13-3925(A) that which is not required by the federal rule.

Leon requires us to determine who is responsible for error before applying the exclusionary rule. This is true for errors on police car computers.[1] Both divisions of our court of appeals recognize that the exclusionary rule is properly limited to

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[1]For example, the Appellate Court of Illinois decided a case very similar to the one we decide today. See People v. Joseph, 470 N.E.2d 1303 (Ill. App. 1984). However, the computer error at issue in Joseph was caused by the police department. The court held that the exclusionary rule was proper because "[t]he situation in the instant case reflects a matter within the responsibility and control of police authorities who failed to update their records to accurately reflect defendant's current status." Id. at 1306.

police misconduct.[2] Today's decision, holding that the source of error is irrelevant, is a major departure from state and federal law. If it is not clear whether the police or court employees were responsible for the error, we should remand for findings on this issue. We cannot conclude that a dispositive issue is irrelevant.

To be sure, we should like to minimize

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[2]In State v. Peterson, 171 Ariz. 333, 830 P.2d 854, our court of appeals, Division 1, held that the exclusionary rule was a proper remedy to deter computer error when "[a]ny mistake was that of the police." Id. at 340, 830 P.2d at 861. Division 2 also decided the exclusionary rule was properly applied to suppress evidence found incident to an arrest caused by computer error if the error was caused by the police. State v. Greene, 162 Ariz. 383, 783 P.2d 829 (App. 1989). The court stated, "[i]f police misconduct, whether it be negligent or deliberate, caused or contributed to the arrest notation being in the computer system, the police department would be responsible for not keeping its computer entries up to date." Id. at 384, 783 P.2d at 830. Thus the divisions are not in conflict on this issue.

computer error.[3] But the way to do this is through education, training and rigorous standards. We limit the exclusionary rule to police misconduct because its costs are so high. "[H]ighly probative and often conclusive evidence of a criminal defendant's guilt is withheld from the trier of fact." Duckworth v. Eagan, 492 U.S. 195, 208, 109 S. Ct. 2875, 2882 (1989) (O'Connor, J., concurring). Its purposeless application defeats the truthfinding process, frees the guilty, and generates disrespect for the law and the administration of justice with no offsetting benefits. Atwood, 171 Ariz. at 667, 832 P.2d at 684.

I, too, am concerned with the loss of "human liberty." Ante, at 6. But the

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[3]Today we deal with computer error, not intentional misconduct. That "mischief," ante, at 6, is far more likely to be deterred by the threat of a civil action for damages than by the exclusion of evidence.

exclusionary rule will not restore liberty to the innocent and should not restore it to the guilty. I dissent.

APPENDIX B

STATE OF ARIZONA

v.

ISAAC EVANS.

Court of Appeals of Arizona, Division One.

May 19, 1992.

EUBANK, Judge.

The State of Arizona appeals from the trial court's order granting defendant Isaac Evans's motion to suppress evidence. We reverse and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

On December 13, 1990, a Phoenix justice of the peace issued a misdemeanor warrant

for Evans's arrest after he failed to appear on December 12, 1990 for several traffic violations. On December 19, 1990, however, Evans did appear before a judge pro tempore, who quashed the warrant.

Under the standard procedure for quashing a warrant, a justice court clerk calls the Maricopa County Sheriff's Office ("Sheriff's Office") to inform them that a warrant has been quashed. The Sheriff's Office then removes the warrant from its computer. After calling the Sheriff's Office, the justice court clerk makes a note in the appropriate file, indicating the clerk who made the telephone call and the person that the clerk spoke with at the Sheriff's Office. In this case, there was no indication in Evans's justice court file that a justice court clerk had called the Sheriff's Office to notify them of the quashed warrant. In addition, the Sheriff's

Office also records all of the telephone calls it receives for quashed warrants. The Sheriff's office also had no record of a telephone call, informing them that Evans arrest warrant had been quashed.

On January 8, 1991, the State filed a complaint against Evans charging him with possession of marijuana, a class 6 felony. The complaint alleged that, on January 5, 1991, Evans had knowingly possessed or used less than one pound of marijuana, in violation of Ariz. Rev. Stat. Ann. ("A.R.S.") §§ 13-3405, -3401, and -3418.

On March 27, 1991, Evans filed a motion to suppress all evidence seized from him on January 5, 1991. At the evidentiary hearing on the motion to suppress, Officer Bryan Sargent testified that, on January 5, 1991, he stopped Evans for driving the wrong way on a one-way street. When he asked Evans for his driver's license, Evans

replied that he did not have a license, because his license had been suspended. After conducting a records check, Officer Sargent found that Evans's driver's license had in fact been suspended and that there was a valid misdemeanor warrant for his arrest. While arresting Evans, however, Officer Sargent had difficulty handcuffing him. Therefore, he asked Evans to relax one of his hands. When Evans relaxed his hand, he dropped a marijuana cigarette. Office Sargent and another officer then searched the passenger compartment of the car and found a bag of marijuana under the passenger seat. The officers also found a package of cigarettes, rolling papers, and marijuana residue in Evans's passenger's purse.

In ruling on the motion to suppress the evidence, the trial court relied exclusively on State v. Greene, 162 Ariz. 383, 783

P.2d 829 (App. 1989). The trial court found that our facts were indistinguishable from the facts in Greene and, therefore, granted Evans's motion to suppress the evidence. The trial court also granted the State's motion to dismiss without prejudice.

ISSUE PRESENTED

The State presents one issue on appeal:

Did the trial court abuse its discretion in granting Evans's motion to suppress the evidence?

STANDARD OF REVIEW

This court will not reverse the trial court's ruling on a motion to suppress unless the trial court abused its discretion. State v. Prince, 160 Ariz. 268, 272, 772 P.2d 1121, 1125 (1989); State v. Coats, 165 Ariz. 154, 158-59, 797 P.2d 693, 697-98 (App. 1990). On a motion to suppress evidence, this court must view the facts in a light most favorable to the trial

court's ruling, and the trial court's ruling will not be disturbed absent clear and manifest error. State v. Gerlaugh, 134 Ariz. 164, 167, 654 P.2d 800, 803 (1982).

DISCUSSION

The State argues that the trial court abused its discretion in granting Evans's motion to suppress. It contends that the facts in Greene are distinguishable from the facts in this case, because, in Greene, the police department was negligent in maintaining the computer records, whereas in this case the justice court employees were negligent in failing to inform the Sheriff's Office that Evans's arrest warrant had been quashed.[1] The State also argues

[1]The trial court, however, indicated that two different inferences could be drawn from these facts. First, a justice court clerk could have failed to call the Sheriff's Office to inform them of the quashed warrant. Alternatively, a justice court clerk could have called the Sheriff's Office, informing them of the quashed

that the arresting officers had no reason to know that the arrest warrant had been quashed. Further, it contends that the police officers were acting on a good faith belief that the arrest warrant was valid. Therefore, the State argues that, based on the good faith exception to the exclusionary rule and section 13-3925 of the Arizona Revised Statutes[2], the trial court abused its discretion in granting Evans's motion to suppress.

Evans argues that the trial court did not abuse its discretion in granting his motion to suppress. He contends that the facts of this case are indistinguishable from the facts of Greene. Thus, he argues that the trial court properly granted his motion to suppress.

warrant, and then failed to record the telephone call in Evans's justice court file.

[2]See infra pp. 8-9.

I.

In Greene, the South Tucson Police Department stopped appellee's van for a traffic violation. 162 Ariz. at 383, 783 P.2d at 829. The records check indicated that appellee had an outstanding City of Tucson arrest warrant based upon appellee's failure to appear for a previous traffic violation. Id. Greene was arrested and handcuffed, and a search of his pockets revealed narcotics. Id. The officers subsequently learned that the warrant had been quashed by Tucson City Court eight months earlier. Id. Appellee later moved to suppress the narcotics seized during the search, and the trial court partially granted his motion to suppress. See id. In affirming the trial court, the Arizona Court of Appeals stated as follows:

> If one were to look only at the actions of the arresting officer of the South Tucson Police Department,

> the conclusion would be that the ends of the exclusionary rule would not be advanced by holding the evidence inadmissible. However, under the facts of this case one must look beyond his actions and focus on the actions of the South Tucson Police Department. If police misconduct, whether it be negligent or deliberate, caused or contributed to the arrest notation being in the computer system, the police department would be responsible for not keeping its computer entries up to date. No evidence was presented to the trial court establishing that the police department was blameless in having the arrest warrant notation in its computer system. Although the state suggests that such was the case, it concedes that the record is silent in this regard. Accordingly, the ends of the exclusionary rule would be furthered in an appreciable way by holding the evidence inadmissible because such a holding would tend to deter the South Tucson Police Department from deliberately or negligently failing to keep its paperwork or computer entries up to date, exposing persons to a possible wrongful arrest.

Id. at 384, 783 P.2d at 830.

The facts in this case are distinguishable from the facts in Greene. In Greene, the court upheld the suppression of the evidence

to "deter the South Tucson Police Department from deliberately or negligently failing to keep its paperwork or computer entries up to date, [thereby] exposing persons to a possible wrongful arrest." Id. In this case, however, there is no evidence that the arresting officers or the Phoenix Police Department were negligent in any way. In fact, the police officers would have been negligent had they not arrested Evans for his outstanding arrest warrant. Further, in Greene, the court upheld the suppression of the evidence, because "[n]o evidence was presented to the trial court establishing that the police department was blameless in having the arrest warrant notation in its computer system." Id. However, in this case, the State presented evidence indicating that the justice court employees, not the Phoenix Police Department, were negligent in failing to inform the Sheriff's

Office that Evans's arrest warrant had been quashed. For these reasons, the facts in Greene are distinguishable from the facts in this case.

II.

At the evidentiary hearing, the trial court appeared to overgeneralize the rationale behind the exclusionary rule. The trial court specifically stated as follows:

> [The Greene court] make[s] it clear that what [it is] trying to do is to deter negligence; in that case, to deter the negligence of the . . . South Tucson Police Department. . . . And in this case, perhaps the negligence of the Justice Court, or the negligence of the Sheriff's office. But it is still the negligence of the State.

The United States Supreme Court has repeatedly stated that the purpose of the exclusionary rule is to deter unlawful police conduct. E.g., United States v. Leon, 468 U.S. 897, 916 (1984) (emphasis added); Michigan v. Tucker, 417 U.S. 433, 446 (1974)

(emphasis added). Although this case involves an arrest warrant and Leon and Tucker both involve search warrants, the Arizona Court of Appeals has concluded that Leon may also apply in an invalid arrest warrant situation. See Greene, 162 Ariz. at 384, 783 P.2d at 830. In Michigan v. Tucker, the Court stated that, when a police officer acts in complete good faith, "the deterrence rationale [of the exclusionary rule] loses much of its force." 417 U.S. at 447 (emphasis added). In Leon, the Court clarified the good faith exception to the exclusionary rule, stating that if a police officer's actions are objectively reasonable, "excluding the evidence will not further the ends of the exclusionary rule in any appreciable way . . . ." 468 U.S. at 919-20 (quoting Stone v. Powell, 428 U.S. 465, 539 (1976) (White, J., dissenting)) (emphasis added).

We find that the arresting officers' actions in this case were objectively reasonable. See id. The arresting officers had absolutely no way of knowing that Evans's arrest warrant had been quashed. Further, the exclusionary rule is intended to deter police misconduct and not to punish errors of judges and magistrates. Id. at 916. Similarly, we believe that the exclusionary rule is not intended to deter justice court employees or Sheriff's Office employees who are not directly associated with the arresting officers or the arresting officers' police department. See id. In this case, excluding evidence because of a clerical error outside of the control of the Phoenix Police Department would not deter the justice court employees or the Sheriff's Office employees from making such errors in the future. In fact, a justice court employee testified that this sort of error occurs

only about once every three or four years. Moreover, excluding evidence would not deter the Phoenix Police Department from relying on invalid arrest warrants, because there was not indication that the arresting officers or the Phoenix Police Department were negligent in relying on Evans's arrest warrant. Therefore, the purpose of the exclusionary rule would not be served by excluding the evidence obtained in this case.

III.

Arizona also has a good faith exception statute. See A.R.S. § 13-3925 (1989). In pertinent part, section 13-3925 provides as follows:

> A. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if

> otherwise admissible.
>
> B. The trial court shall not suppress evidence which is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.
>
> C. In this section:
>
> 1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts which if true would be sufficient to constitute probable cause.
>
> 2. "Technical violation" means a reasonable good faith reliance upon:
>
> . . .
>
> (b) A warrant which is later invalidated due to a good faith mistake.

Id. The Arizona Court of Appeals has held that A.R.S. section 13-3925 is "both within the power of the legislature to enact and offends neither the state nor federal constitutions." Coats, 165 Ariz. at 158, 797 P.2d at 697. Under Arizona's good faith exception statute, we find that neither

the arresting officers nor the Phoenix Police Department were negligent in arresting Evans or in searching his person. See A.R.S. § 13-3925 (1989). We also find that the trial court abused its discretion by suppressing the evidence. See id. Moreover, we conclude that A.R.S. section 13-3925 is inapplicable to the conduct of the justice court employees or the Sheriff's Office's employees in this case. See id.

Therefore, we find that the trial court abused its discretion in granting Evans's motion to suppress.

CONCLUSION

For the foregoing reasons, we find that the trial court abused its discretion in granting Evans's motion to suppress evidence. Therefore, we reverse and remand for further proceedings consistent with this opinion.

CLABORNE, J., dissenting.

I respectfully dissent. The record is clear on several points. First, the arrest of Evans was only because of the outstanding warrant reflected by the computer. Second, it is not clear at all that the justice court failed to notify the sheriff that the warrant had been quashed by the justice court. Nevertheless, the responsibility for a valid warrant to arrest remains with those effecting that arrest. Third, the arrest warrant had been quashed for approximately twenty-four days.

First, I feel that State v. Greene, 162 Ariz. 383, 783 P.2d 829 (App. 1989), controls this case. A fair reading of that case indicates that if the police are negligent in failing to keep their computer entries up to date, the evidence obtained by an arrest based on a warrant which had been quashed should be suppressed. The trial court was well within its discretion in

coming to the conclusion that they could have been negligent.

Second, although the case is not directly on point, a plethora of cases dealing with invalid warrants and police computer entries was collected in State v. Peterson, 94 Ariz. Adv. Rep. 58, 59 (App. Sept. 5, 1991).

Finally, Peterson held that the "good faith" exception to the exclusionary rule permitting the introduction of evidence obtained through invalid arrest warrant does not apply to this kind of case, either on the basis of the Arizona statute or on the basis of United States v. Leon, 468 U.S. 897 (1984). It is the responsibility of the police to update their records, and such a failure should not overcome a defendant's constitutional right to a valid warrant or probable cause before an arrest and search. There is a growing problem with police reliance on electronically

recorded and disseminated criminal files. See People v. Joseph, 470 N.E.2d 1303 (Ill. 1984). There is nothing in this record which would justify disturbing the discretion of the trial court in suppressing this evidence under these facts. I would affirm.

(3)

No. 93-1660

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

STATE OF ARIZONA,

Petitioner,

-vs-

ISAAC EVANS,

Respondent.

ON WRIT OF CERTIORARI TO

THE ARIZONA SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION

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SUMMARY OF ARGUMENT

This Court has no jurisdiction under 28 U.S.C. § 1257(a) because the Supreme Court of Arizona did not decide a federal question.

ARGUMENT

The State of Arizona has petitioned this Court for certiorari, asserting (Petition at page 2) that jurisdiction lies under the last clause of 28 U.S.C. § 1257(a), which gives this Court jurisdiction ". . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States." Specifically, the State of Arizona claims the Fourth Amendment is implicated. (Id. at 3). This is not accurate. There is in fact no federal question in this case, substantial or otherwise.

The matter at hand started out as a possession of marijuana case, after the hapless Mr. Evans was stopped for going the wrong way on a one way street, directly in front of the main police station in Phoenix. After charges were filed, a young public defender filed a Motion to Suppress for Mr. Evans on March 27, 1991. This motion was grounded on the Fourth Amendment to the United States Constitution. However, except for a dissenting opinion in the Arizona Supreme Court this is the last time the Fourth Amendment has even been mentioned in this case. Raising a matter in a state trial court is insufficient to confer federal question jurisdiction on this Court. Beck v. Washington, 369 U.S.

541, 549-554 (1962). This is not a matter of specificity. The Fourth Amendment simply never again played a part in the case until the State of Arizona brought it here.

This started right away. On April 3, 1991, the State filed a 6 page response to the Motion to Suppress in the trial court. The response does not mention the Fourth Amendment.

No reply was filed.

The Motion to Suppress was heard on April 15, 1991, in the Superior Court. A 46 page transcript (RT) was generated. There is no mention of the Fourth Amendment in the transcript. The trial judge said, "Motion to suppress is granted" (RT 46, April 15, 1991) and that is all he said.

The Minute Entry that was created to memorialize this hearing did not mention the Fourth Amendment either. It said, "It is ordered granting defendant's motion to suppress evidence." (Page 3).

The State's timely notice of appeal was filed on May 3, 1991. There is no mention of the Fourth Amendment in the notice.

In Arizona this appeal went to the intermediate Court of Appeals. There the matter was briefed. There is nothing in the State's opening brief about the Fourth Amendment. Nor is there anything about it in the answering brief. Nor in the reply brief.

It is not, then, surprising that when Division One of the Arizona Court of Appeals reversed the trial court on May 19, 1992, it said not a word about the Fourth Amendment. State v. Evans, 172 Ariz. 314, 836 P.2d 1024.

Under the Arizona practice Evans had a right to ask the Arizona Supreme Court for discretionary review at this juncture. He did this by filing a Petition for Review on May 26, 1992. This petition did not mention the Fourth Amendment.

The State responded to this on June 25, 1992. The State did not mention the Fourth Amendment in its response.

On October 6, 1992, the Arizona Supreme Court granted review.

Finally, on January 13, 1994, the Arizona Supreme Court filed an opinion reinstating the trial court's suppression order. State v. Evans, ___ Ariz. ___, 866 P.2d 869. Four of the five members of the court comprised the majority and they did not mention the Fourth Amendment. Justice Martone, in dissent, did mention it, and that was the first time it had been mentioned by anyone since the young lawyer filed the motion years before.

If the State of Arizona wished to bring a federal question here, it had the obligation to preserve the question through the Arizona judicial system. Exxon Corp. v. Eagerton, 462 U.S. 176, 181 n.3 (1983). It has failed to do this and so there is no federal question before this Court.

This Court cannot simply assume that all along everyone in Arizona was talking about the Fourth Amendment, even though no one ever mentioned it. The fact is that Arizona has its own constitutional protections and its own exclusionary rule, and it is a virile one. State v. Ault, 150 Ariz. 459, 724 P.2d 545 (1986). This is not to say that the Arizona Supreme Court relied on the state constitution. All that is clear is that they did not rely on

the federal. It is crystal clear that they did not rely on Fourth Amendment jurisprudence. For the Arizona Supreme Court Justice Zlaket wrote, "It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness." 866 P.2d at 872. This generalized reliance on the principles of a free society is hardly reviewable by this Court.

CONCLUSION

Because there is no federal question in this case Evans asks that Arizona's petition for a writ of certiorari be denied.

Dated this 26th day of April, 1994.

Respectfully submitted,

By _____

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No. 93-1660

In The
Supreme Court of the United States
October Term, 1993

STATE OF ARIZONA,
Petitioner,

vs.

ISAAC EVANS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARIZONA

BRIEF
AMICI CURIAE
OF
AMERICANS FOR
EFFECTIVE LAW ENFORCEMENT, INC.,
JOINED BY
THE INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE, INC.,
THE NATIONAL DISTRICT
ATTORNEYS ASSOCIATION, INC., AND THE
NATIONAL SHERIFFS' ASSOCIATION,
IN SUPPORT OF THE PETITIONER.

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STATE OF ARIZONA,
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., AND THE NATIONAL SHERIFFS' ASSOCIATION, IN SUPPORT OF THE PETITIONER.

This Brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.

INTEREST OF AMICI CURIAE

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over eighty-five times in the Supreme Court of the United States and over thirty-five times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 72 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all of our citizens.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America,

consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the Nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of making and overseeing arrests within the bounds of the law, and (2) prosecutors and police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters and to prosecute cases involving evidence obtained as a result of arrests and searches conducted incident thereto.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel—we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

ARGUMENT

THE EXCLUSIONARY RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE WHICH HAS BEEN SEIZED INCIDENT TO AN ARREST BASED UPON A COMPUTER RECORD OF AN OPEN WARRANT THAT HAD ACTUALLY BEEN QUASHED EARLIER.

The Supreme Court of Arizona, *State v. Evans*, 866 P.2d 869 (Az. 1994), ruled that the Fourth Amendment exclusionary rule applies to evidence obtained during a search incident to an arrest based upon an erroneous computer record that did not reflect the fact that the warrant for the arrest of the defendant had been quashed. It ruled that even assuming that the error in a computer record was the fault of the court rather than the police, the good faith exception to the exclusionary rule, *United States v. Leon*, 468 U.S. 897 (1984), would not apply to the situation in the present case.

Amici will not repeat the able legal arguments made by the State of Arizona in this issue. We note initially that there are at least two ways of viewing the case: (1) as a situation involving no violation of the Fourth Amendment and, therefore, a case not appropriate for application of the good faith exception adopted by this Court in *Leon*, *supra*, or (2) as a situation involving a technical violation of the Fourth Amendment and appropriate for application of the good faith exception adopted in *Leon*. In either situation we believe the court below was in error and should be reversed.

It would seem difficult to maintain that the officer did not have objectively based probable cause to make an arrest at

the time he confronted the defendant on the street, based upon the totality of the circumstances known to him *at the moment of arrest*. The officer had official information indicating that an outstanding warrant for defendant's arrest existed. This was ample probable cause for him to make an arrest. *Florida v. Royer*, 460 U.S. 491 (1983); *Beck v. Ohio*, 379 U.S. 89 (1964); *Draper v. United States*, 358 U.S. 307 (1959). Indeed, if the officer had not made an arrest based upon the official information good on its face as conveyed to him, he would have been derelict in his duty and could have been subjected to disciplinary action by his employer.

Amici submit that the officer made a valid arrest based upon probable cause and that a contrary rule would work immeasurable damage to the criminal justice system. We point out from our perspective as law enforcement administrators and counsel, that if an officer were required to go behind official sources of information in the context of this case (involving computer records of warrants of arrest and the actions of multiple judicial and clerical actors), officers in many cases would not be able to act and arrests could not and would not be made.

It would often be impossible for an officer to go behind such sources of official information to see whether every official actor in the chain of action had done his or her job correctly. An arrest would simply not be possible if the officer were responsible for verifying every piece of information coming to him through official channels.

The arrest would not be made, the suspect would be freed on the street or in the stationhouse, and dangerous suspects would return to the streets free to wreak havoc on innocent victims. Certainly the public would not be served by a rule allowing misdemeanants or felons to slip through the hands

of law enforcement officers who have neither the time nor the ability to verify sources of official computer information at the street level.

To require an officer to take a person into custody in order to manually check out sources of official information at the stationhouse pertaining to computer records, would involve a technical arrest with the potential for civil liability for the officer and his or her agency if the manual check determined that there was an error in the computer records. Police officers should not be subjected to such potential civil liability risks.

We submit that the Court, based upon ample and long-standing precedent, should find that a valid, probable cause arrest was made in this case and that the exclusionary rule simply does not apply.

If, *arguendo*, the rule *does* apply then *amici* submit that the case presents an appropriate application for the good faith exception adopted in *Leon*, *supra*. This Court has made it clear that the exclusionary rule is not a personal right of the defendant but, rather, hinges upon the deterrent effect of the rule in preventing police violations of constitutional rights. *United States v. Leon*, *supra*; *Michigan v. Tucker*, 417 U.S. 433 (1974); *United States v. Calandra*, 414 U.S. 338 (1974). If the arresting officer has committed no error attributable to him or other police actors—as persuasively appears from the record in this case—then application of the exclusionary rule can have no possible deterrent effect upon the police. *Amici* submit that the good faith exception was fashioned precisely for this type of case—where there has been no error attributable to the police and the officer has acted in objective good faith based upon the totality of the circumstances.

The exception adopted in *Leon*, *supra*, we submit, has been proved workable and beneficial, and has not deprived defendants of their constitutional protections. The rule should be extended to arrest as well as searches, whether with or without a warrant. The underlying rationale for the exception and the rule itself—deterrence of police misconduct—is well served by a broad-based application to all police action falling within the purview of the Fourth Amendment.[1]

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[1] *Amicus* Americans for Effective Law Enforcement (AELE) interprets the record in this case as indicating that a court employee was the source of the computer error. AELE does not urge extension of the good faith exception to instances where law enforcement personnel cause the error.

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

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(A)

No. 93-1660

In The

Supreme Court of the United States

October Term, 1994

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Arizona

JOINT APPENDIX

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Petition For Certiorari Filed April 14, 1994
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The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the Petition for Writ of Certiorari:

RELEVANT DOCKET ENTRIES

DATE	ENTRY
March 27, 1991	Respondent filed motion to suppress all evidence seized as result of his arrest.
April 15, 1991	After an evidentiary hearing, the trial court granted the motion to suppress.
May 3, 1991	Petitioner filed notice of appeal from order granting motion to suppress.
May 19, 1992	Arizona Court of Appeals issued opinion reversing the trial court's order granting motion to suppress.
January 13, 1994	Arizona Supreme Court issued opinion vacating the Court of Appeals' opinion and affirming the trial court's order granting the motion to suppress.

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Attorney for Defendant

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, v. ISAAC EVANS, Defendant.	No. CR 91-00513 MOTION TO SUPPRESS EVIDENCE (Evidentiary Hearing and Oral Argument Requested) (Assigned to the Honorable Thomas W. O'Toole – Div. 32) (Filed Mar. 27, 1991)

COMES NOW the defendant, by and through undersigned counsel, and moves this Court to suppress any and all evidence seized or obtained as a result of the arrest of the defendant. It is defendant's contention that he was arrested in violation of the Fourth and Fourteenth Amendments to the United States Constitution. This Motion is further supported by the attached Memorandum of Points and Authorities.

Respectfully submitted this 26th day of March, 1991.

DEAN W. TREBESCH
MARICOPA COUNTY PUBLIC
DEFENDER

By /s/ Stephen Whelihan
STEPHEN WHELIHAN
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND:

The following factual summary is based on Phoenix Police Departmental Report #10010363 as well as evidence to be adduced at the hearing on this motion.

On January 5, 1991 at approximately 6:30 p.m., Phoenix Police Officers Sargent and Lumley stopped Isaac Evans for driving the wrong way down Washington Avenue, a one way street. Officer Sargent obtained identification from Mr. Evans and ran a computer check which indicated an outstanding warrant for his arrest, number 9004145, for Failure to Appear in Central Phoenix Justice Court on a charge of Driving with a Suspended License. Officer Sargent then arrested Mr. Evans based on the warrant.

While being handcuffed, Mr. Evans was ordered to open his fist and he allegedly dropped a marijuana cigarette which was seized as evidence. Police then searched the vehicle, and allegedly found a clear plastic bag containing marijuana under the passenger seat, which had been occupied by one Lois Ann Hornsby. Ms. Hornsby

was arrested for Possession of Marijuana and a subsequent search of her purse allegedly revealed marijuana seeds and cigarette rolling papers.

On December 19, 1990, Isaac Evans had appeared in Central Phoenix Justice Court and Justice of the Peace Richard Ortiz had ordered that warrant number 904145 be quashed.

LEGAL ARGUMENT:

Evidence obtained in a search incident to an invalid arrest is not admissible. *State v. Chudy*, 108 Ariz. 23, 492 P.2d 402 (1972). In the instant case, the arrest was based on a warrant which no longer had any legal effect. Therefore the arrest was not valid. The evidence seized in this case was obtained as a direct result of the invalid arrest and must therefore be suppressed.

In *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (App. 1989) the defendant was stopped for a traffic violation and a records check showed an outstanding warrant. The defendant was arrested and a search of his pockets revealed narcotics. It was subsequently learned that the warrant had been quashed prior to the defendant's arrest. Suppression of the evidence by the trial court was upheld by the Court of Appeals.

In *Greene*, the State's appeal relied on *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), in which the "good faith" of the arresting officer in executing a search warrant which was subsequently found to be based on less than probable cause was held to justify the court's refusal to apply the exclusionary rule. The

Supreme Court reasoned that the purpose of the exclusionary rule, deterrence of police misconduct, is not served where the invalid search is based on judicial error. The *Greene* court found that the exclusionary rule does apply where the police department is responsible for not keeping its computer entries up to date.

CONCLUSION:

The arrest of Isaac Evans, which resulted in the seizure of evidence in this case, was invalid because it was based on a warrant which had been quashed. The "good faith" exception to the exclusionary rule is inapplicable in this case because it was police error, not judicial error, which caused the invalid arrest. Therefore, any and all evidence seized as a result of the invalid arrest must be suppressed.

Respectfully submitted this 26th day of March, 1991.

DEAN W. TREBESCH
MARICOPA COUNTY PUBLIC
DEFENDER

By /s/ Stephen Whelihan
STEPHEN WHELIHAN
Deputy Public Defender

Copy of the foregoing motion
mailed/delivered this 26th
day of March, 1991 to:

HON. THOMAS W. O'TOOLE
Judge of the Superior Court

KIM N. STUART
Deputy County Attorney

By /s/ Stephen Whelihan
STEPHEN WHELIHAN
Deputy Public Defender

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

Kim N. Stuart
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Telephone: 602 495-8422
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, vs. ISAAC EVANS, Defendant.	NO. CR 91-00513 **STATE'S RESPONSE TO MOTION TO SUPPRESS EVIDENCE** (Assigned to the Honorable Thomas W. O'Toole, Div. 30) (Filed Apr. 3, 1991)

COMES NOW, the State of Arizona, by and through undersigned counsel, and respectfully requests that Defendant's Motion be denied based on the following Memorandum of Points and Authorities.

Respectfully submitted this 3 day of April, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY /s/ Kim N. Stuart
Kim N. Stuart
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

The State adapts [sic] the facts set out in Defendant's Motion with the following additions: When stopped the Defendant was asked for his driver's license. He responded that he didn't have it because it was suspended. The computer check revealed the warrant and confirmed the fact that Defendant's license was suspended.

The warrant was issued for Failure to Appear on driving on a suspended license. It was issued on December 13, 1990. The warrant was issued out of East Phoenix I Justice Court and quashed by the Justice of the Peace in Central Phoenix Justice Court.

The standard procedure in quashing a warrant is for a clerk in the Justice Court to notify the Maricopa County Sheriff's Office that the warrant has been quashed. The Sheriff's office then removes it from the computer. When the Justice Court notifies the Sheriff's office a notation is made in the file to that affect [sic] indicating who called and who at the Sheriff's office was spoken to. In this case, there is no such notation indicating the Sheriff's office was not notified that the warrant was quashed. (See attached exhibit). The Sheriff's office has no record of being notified that the warrant was quashed.

ARGUMENT:

Defendant was arrested for both the warrant and for driving on a suspended license, which is a class one

misdemeanor. A.R.S. §13-473. The fact that Officer Sargent articulated the arrest as being for the warrant and not for the suspended license in no way means that Defendant could not validly be arrested on the driving violation. The subjective state of mind of the officer is not controlling. The question of whether the arrest of Defendant is valid turns on an objective assessment of the officer's action in light of the facts known to him at the time, not on his subjective motivation. *Scott v. United States*, 436 U.S. 128, 98 S.Ct. 1717, 55 L.Ed 2d 168 (1978).

"[T]he fact that the officer does not have the State of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Scott, supra* at 138. Clearly Defendant was subject to arrest (and was in fact arrested) for driving on a suspended license. The arrest therefore was valid and the evidence resulting from the search incident to the arrest is admissible. See *United States v. Rambo*, 789 F.2d 1289 (1986).

In any event, the officer acted in good faith in arresting the Defendant pursuant to a warrant that appeared to be valid. A.R.S. §13-3925 provides that evidence shall not be suppressed if "the Court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation." Here, the officer acted upon a warrant which he believed to be valid. This is both a "good faith mistake" under §13-3925(c)(1) since if the warrant was valid it would constitute probable cause to arrest and a "technical violation" under §13-3925(c)(2) since the officer relied on a warrant which was later invalidated due to a good faith mistake.

In this case the warrant was issued on December 13, 1990, quashed on December 19, 1990 and the arrest occurred on January 5, 1991. This is a total of 23 days from issuance and only 17 days from quashing. This all took place during the holiday season when things are very hectic, people are on vacation, and due to the holidays the number of actual working days is less. It appears the Justice Court was tardy in relaying the information that the warrant was quashed to the Sheriff's office. Under the circumstances existing here, it was reasonable for the officer to have relied on the warrant.

State v. Greene, 162 Ariz. 383, 783 P.2d 829 (App. 1989) cited by the Defendant does not deal with the Arizona good faith statute. In addition, in *Greene* there was a delay of eight months between the quashing of the warrant and the arrest. The decision is *Greene* turns on the Court's finding that the police department (negligently or deliberately) caused the warrant to still be in the computer. Applying the exclusionary rule would, (the Court felt) deter the police department from failing to keep its computer entries up to date.

Here there is evidence that it was not the doing of the Phoenix Police Department that the warrant was still in the computer and the delay was only 17 days during the holiday season. Suppressing the evidence in this case would in no way deter police misconduct.

"[T]he rationale for the exclusionary rule is that by making the evidence obtained inadmissible, the police are not rewarded for violating a defendant's constitutional rights, and that such conduct will be deterred in the future." *State v. Nahee*, 155 Ariz. 114, 116, 745 P.2d 172

(App. 1987). Suppressing the evidence in this case will not further the purpose of the exclusionary rule.

"If you were to look only at the actions of the arresting officer of the South Tucson Police Department, the conclusion would be that the ends of the exclusionary rule would not be advanced by holding the evidence inadmissible. However, *under the facts of this case* one must look beyond his actions and focus on the actions of the South Tucson Police Department." (Emphasis added) *Greene, supra* at 384-385. *Greene* is sufficiently distinguishable from the case at bar that this court has no need to look beyond the actions of Officer Sargent.

Based on the foregoing, Defendant's Motion should be denied.

Respectfully submitted this 3 day of April, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY /s/ Kim N. Stuart
Kim N. Stuart
Deputy County Attorney

Copy of the foregoing
mailed/delivered this
3 day of April, 1991,
to:

The Honorable Thomas W. O'Toole
Judge of the Superior Court

Stephen Whelihan
Deputy Public Defender
132 South Central
Phoenix, AZ 85004
Defense Attorney

BY /s/ Kim N. Stuart
Kim N. Stuart
Deputy County Attorney

KS:jd
4.3.7

13

TRAFFIC CALENDAR

PLEASE PRINT

NAME: ISAAC EVANS

STREET ADDRESS: __________

APARTMENT NUMBER: __________

CITY: __________ **STATE:** _____ **ZIP:** _____

HOME PHONE: __________ **WORK PHONE:** __________

CITATION NUMBERS: __________

OUR CASE NUMBER: TR- 90-04145/46/47/48-CR

DATE		CLERK
DEC 1 2 1990	Δ M: ΔFTA	
	Dir [illegible] for [illegible] -	
	at time of [illegible] IA	
	Custody status now → [illegible]	
	[illegible]	
	[illegible] B/W.	
	Not in Custody - Released on 12-5-90	me
	ENTERED EOP	
DEC 1 9 1990	Δ appeared [illegible] Financial Statement DR & MIO	[illegible]
12-19-90	Δ appeared: quash warrant, release OR - set for PTC. 2-26-91 @ 1:30 -	
		[illegible]
	ENTERED EOP	

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
Plaintiff,	)	
vs.	)	No. CR91-00513
ISAAC EVANS,	)	
Defendant.	)	
_____	)	

Phoenix, Arizona
April 15, 1991

BEFORE: The Honorable I. SYLVAN BROWN, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing: Motion to Suppress

MICHAEL N. VACCA
Official Court Reporter

Prepared for Appeal

[p. 4] Phoenix, Arizona
April 15, 1991
10:27 a.m.

THE COURT: CR91-00513, State of Arizona versus Isaac Evans. This is the time regularly set for the evidentiary hearing on the defendant's Motion to Suppress.

Is the State ready?

MR. STUART: Yes, Your Honor. Kim Stuart for the State.

THE COURT: Defense?

MR. WHELIHAN: Yes, Your Honor. Steven Whelihan appearing on behalf of the defendant, who is present and out of custody.

THE COURT: You may proceed.

MR. STUART: Thank you, Your Honor. I would call Officer Sargent.

BRYAN, SARGENT, called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STUART:

Q. Would you state your name, please?

[p. 5] A. Bryan Thomas Sargent.

Q. What is your occupation?

A. Police Officer, City of Phoenix.

Q. How long have you been so employed?

A. Four and-a-half years.

Q. What is your present assignment?

A. Patrol officer.

Q. Let me draw your attention to January 5th of 1991. What was your assignment at that time?

A. Patrol still.

Q. Were you on duty on that day about 6:30 p.m.?

A. Yes, I was.

Q. Did you have occasion to be in the area of 620 West Washington?

A. Yes, I was.

Q. Is that in Phoenix, Maricopa County, Arizona?

A. Yes.

Q. While there, what were you doing there?

A. I was turning in paperwork. That is the main police station. I was turning in paperwork there for another arrest.

Q. Where were you located?

A. We were parked right in front there.

[p. 6] Q. You were parked in a vehicle?

A. Yes.

Q. Was there anyone with you?

A. Another officer, Lumley, was with me.

Q. While you were there, did you observe something that drew your attention?

A. Yes.

Q. What was that?

A. We observed a vehicle traveling on the wrong way of a one-way street.

Q. Washington is a one-way street?

A. Yes.

Q. One-way going west?

A. Westbound.

Q. This vehicle was going eastbound?

A. Yes.

Q. What did you do?

A. We activated our overhead lights and made a U-turn to stop this vehicle.

Q. Did the vehicle stop?

A. Yes.

Q. Any problems in the stop?

A. No.

Q. Did you approach the driver?

A. Yes. We approached each other.

[p. 7] Q. Is the driver present in the courtroom today?

A. Yes, he is.

Q. Would you point him out, please?

A. He is sitting at the other table, in the brown suit.

THE COURT: Let the record indicate that the witness has indicated the defendant.

MR. STUART: Thank you, Your Honor.

BY MR. STUART:

Q. Did you – as you approached the driver, the defendant, did you ask him for a driver's license?

A. Yes, I did.

Q. What did he say?

A. He said he didn't have one because he didn't have it because it is suspended.

Q. Did you proceed to get some information, some identifying information from him?

A. Yes, I did. He didn't have any I.D., so I took his name.

Q. Did you have occasion, then, to run that name in your computer?

A. Yes, I did.

Q. And that is contained within your police vehicle?

[p. 8] A. Yes, it is.

Q. Did you get a response to your inquiry?

A. Yes.

Q. What did that indicate?

A. The one response I got from M.V.D. was that his license was suspended.

Q. Did you make any other inquiries?

A. Yes. We also checked him for warrants, and he did have a warrant, misdemeanor warrant.

Q. At that time, did you know what that misdemeanor warrant was for?

A. No.

Q. After you received that information, what did you do?

A. I went back to Mr. Evans, and I advised him that he was under arrest for the warrant.

Q. And what action did you take at that time?

A. I escorted him over to my police car, where we searched him and handcuffed him.

Q. Prior to your handcuffing, did you observe him make any – do anything with his hands?

A. He had had his hands in his front pocket, I think, most of the time. And then when I approached him and told him he was under arrest for the warrant, he had taken his hand out of his pocket.

[p. 9] Q. Did you have any trouble placing the handcuffs on the defendant?

A. Yes, I did.

Q. Can you describe what that was?

A. Mr. Evans is a muscular individual, and he was having a little trouble getting his hand behind his back. He had his left hand clenched in a fist, which was making it more difficult for me to turn his hand to get the – cuff him.

I asked him to relax his hand so I could put handcuffs on.

Q. Did he in fact do that?

A. He finally did after two requests.

Q. And did you observe anything happen when he relaxed his hand?

A. As soon as he opened his hand, a rolled cigarette fell to the ground from his hand.

Q. You mean like a handrolled cigarette?

A. Yes.

Q. What did you do at that time?

A. Well, I put the cuffs on him, and then I had him take a seat in the back seat of the patrol car.

Q. Did you take any action, or have any action taken with respect to this handrolled cigarette?

A. Yes. Officer Lumley recovered the [p. 10] cigarette.

Q. Did you look at the cigarette?

A. Yes, I did.

Q. Did you reach a conclusion as to what was contained in the cigarette?

A. Yes, I did.

Q. What was that?

A. The cigarette smelled like it possibly contained marijuana.

Q. Did you then seize that cigarette?

A. Yes.

Q. Did you have occasion then to search the vehicle?

A. Yes, we did.

Q. And would this have been pursuant to the arrest?

A. Yes.

Q. Let me ask you this: Did you also place the defendant under arrest for the driving on suspended license that you observed?

MR. WHELIHAN: Objection. Leading.

THE COURT: Sustained.

BY MR. STUART:

Q. Did you have occasion to search the vehicle?

A. Yes.

[p. 11] Q. What was the basis for searching the vehicle?

A. Incident to the arrest.

Q. Was there anything found in the vehicle?

A. Yes. We found a baggie of a large quantity for usable amount of green leafy substance underneath the passenger seat. We believed it to be marijuana.

Q. Was there a passenger in the vehicle?

A. Yes, there was.

Q. Prior to the search, had you asked her to step out?

A. Yes, I had.

Q. Did Officer Lumley search her person?

A. Yes, she did.

Q. Did she find some items of contraband in her purse?

A. Yes, she did.

Q. What was that?

A. She found a package of cigarettes, rolling papers, and some marijuana residue.

Q. Going back to Mr. – excuse me, to the arrest of the defendant, did you have occasion at some time after that you had arrested him to call to confirm the warrant?

A. Yes, we did.

[p. 12] Q. And what happened on that call?

A. Well, we contacted our I-Bureau, because it was a Phoenix warrant, and we were advised that the warrant was still good.

Q. Did you also arrest the defendant for driving on a suspended license?

A. Yes, we did.

MR. WHELIHAN: Objection.

THE COURT: Oh, the objection is sustained.

Counsel, you asked a question that way; it was objected to and sustained. That is not right to ask him.

MR. STUART: It was objected to as leading, and that is not a leading question.

THE COURT: It is a leading question. You could have asked him what else he arrested him for. He already testified he arrested him based on the warrant, and for no other reason. And if you keep asking him enough, maybe he'll agree with you.

MR. STUART: All right.

THE COURT: The objection is sustained, and the answer is stricken.

BY MR. STUART:

Q. What else did you arrest him for, if anything?

[p. 13] A. We arrested him for the suspended driver's license and for possession of marijuana.

Q. During –

THE COURT: Do you normally arrest people for driving on a suspended license, or do you normally write them a citation?

THE WITNESS: Your Honor, usually I write them a citation.

THE COURT: Right.

MR. STUART: That was my next question, Your Honor.

THE COURT: Very good.

BY MR. STUART:

Q. In this case, with respect to the defendant, if he had not had that warrant, would you have arrested him for driving on a suspended license?

A. Probably not.

MR. STUART: I have nothing further at this time, Your Honor.

THE COURT: You may examine.

MR. WHELIHAN: Thank you, Judge.

[p. 14] CROSS-EXAMINATION

BY MR. WHELIHAN:

Q. You testified that you probably would not have arrested the defendant but for the warrant. Is that right?

A. Yes.

Q. And usually when you stop someone and find out that they are driving on a suspended license, you would issue a citation.

A. I would, yes.

Q. And your decision as to whether you would take such a person into custody depends on their attitude towards you?

A. Sometimes, yes.

Q. In this case, Mr. Evans was very cooperative with you, wasn't he?

A. Yes, he was.

Q. So if it hadn't been for the warrant, you would have let him go, wouldn't you?

THE COURT: Counsel, that is asked and answered. He already said he would not have arrested him but for the warrant.

MR. WHELIHAN: That is all I have.

MR. STUART: Nothing further from this witness, Your Honor.

[p. 15] THE COURT: Thank you very much. You may step down.

(Witness excused.)

MR. STUART: Your Honor, I would like to call Frances Crossman.

FRANCES CROSSMAN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STUART:

Q. Would you state your name, please?

A. Frances Crossman.

Q. What is your occupation?

A. I'm the chief clerk of the East Phoenix Number One Justice Court.

Q. How long have you been the chief clerk over there?

A. Eight years there.

Q. Did you work over there prior to becoming chief clerk?

[p. 16] A. No.

Q. Have you worked in the Justice Court system prior to that?

A. Yes. I was at the Buckeye Justice Court as chief clerk for four years prior to that.

Q. And were you employed as chief clerk at East Phoenix One during the month of December and January of 1990 and 1991?

A. Yes, I was.

Q. Did you bring some records to court today at my request?

A. Yes, I did.

Q. Do they concern Mr. Isaac Evans?

A. Yes, they do.

Q. Do they indicate a bench warrant being issued for Mr. Evans?

A. Yes, it does.

MR. WHELIHAN: Judge, I think I object here, on the foundation. I don't know what records she's talking about.

THE COURT: Well, I take it –

MR. WHELIHAN: Whether there is a proper foundation for this coming in.

THE COURT: Have it marked. I guess you should establish the foundation, counsel.

[p. 17] MR. STUART: Yes, Your Honor.

THE COURT: We can have them copied and give her back the originals.

THE WITNESS: I did bring copies, if you want.

THE COURT: Counsel, she said she brought copies.

BY MR. STUART:

Q. How many copies did you bring?

A. Just the one set, here.

MR. STUART: Any objection to just marking the copies so we don't have to make copies of the originals and give them back?

MR. WHELIHAN: No. That is fine.

BY MR. STUART:

Q. What records did you bring with you?

A. I brought the entire file.

Q. Of Mr. Evans?

A. Right. I only copied the pertinent part about the issuance of the warrant.

Q. When you say the file, what file are you talking about?

A. We have a file with four separate traffic tickets in the file.

MR. WHELIHAN: Objection. This is irrelevant as to what the file is all about.

[p. 18] THE COURT: Counsel, there is no jury here. That is the file she brought. The objection is overruled.

BY MR. STUART:

Q. Why don't you tell us, while defense counsel is looking at the records, how these records come to be? How they start – how a file starts?

A. Basically, a file starts when we get the I.A. papers, initial appearance papers, the citation, and the DR from the officer. We make up a file at that time. The I.A. court gives us a date for the defendant to appear.

Q. Is that date noted in the record?

A. Yes, it is. He was to appear on December 12th of 1990.

Q. Do your records indicate whether or not he did appear?

A. He did not appear, and the judge made a notation that he was in custody in El Mirage and wanted us to check the jail to make sure that he was out of custody prior to issuing a bench warrant.

Q. Was that done?

A. Yes, it was. He was not in custody. He was released on December 5th.

Q. Was a bench warrant issued?

[p. 19] A. A bench warrant was issued on the next day. It was signed on the next day.

Q. Does your file indicate an appearance made by the defendant sometime after the issuance of the warrant?

A. Yes. On December 19th, the defendant appeared and saw a pro tem judge, who released him O.R. at that time.

Q. Does the file indicate a notation that the warrant should have been quashed?

A. Yes. It says, "Defendant appeared; quash warrant and release O.R.; set for pretrial."

Q. What is your procedure when you are going to quash a warrant?

A. We call the jail and advise them, or the Warrant Section, and advise them to quash the warrant, note on there that you have done it and who you talked to.

Q. In reviewing the records that you brought today, does it indicate that was ever done?

A. It was not done.

Q. The Sheriff's office was not notified that this warrant should have been quashed?

A. That's correct.

Q. Does your –

[p. 20] THE COURT: Is that any less State action, counsel? Just out of curiosity. I mean, you know.

MR. STUART: It is still State action, Your Honor, but it is a difference.

THE COURT: Thank you.

MR. STUART: It is a different agency.

THE COURT: Still State action. You agree with that.

MR. STUART: It is an agency of the State, yes.

THE COURT: Thank you.

BY MR. STUART:

Q. Does your file indicate again the next time that you received some kind of contact with Mr. Evans?

A. On February – excuse me, January 7th, we got I.A. papers stating he had been arrested under our warrant.

We immediately called the jail and told them that he had been released on our charges, faxed them a release order with his same pretrial date on it, and told them to release him on our charges.

Q. Is there any particular person who should be making these notations in the file, or is it just whoever happens to pick it up that particular day?

A. Generally, there are three clerks that work in our traffic area. Any one of the three could have [p. 21] done it. Or should have done it.

Q. And they would make the notation at the time that they were to make this call –

A. Right.

Q. And there is no indication that that call was made?

A. It was not done.

MR. STUART: I have nothing further at this time.

THE COURT: You may examine.

MR. WHELIHAN: Thank you, Judge.

THE COURT: I have one question, if you don't mind, before you examine.

MR. WHELIHAN: Go ahead.

THE COURT: How can you tell that the call was not made as opposed to the call having been made and somebody not making the notation?

THE WITNESS: Generally –

THE COURT: No. No. No. How can you tell from these records whether or not the call was not made, or whether the call was made and somebody forgot to write down the notation you normally make?

I want to know how you can tell that from the record.

THE WITNESS: Well, he was arrested on it.

[p. 22] THE COURT: No. No. How can you tell from the record whether or not the call was made or somebody failed to make the notation?

THE WITNESS: You really can't.

THE COURT: So your answer is you don't know if they called.

THE WITNESS: I don't know that they called. There is no notation that they called.

THE COURT: You may examine.

Q. Thank you, Judge.

CROSS-EXAMINATION

BY MR. WHELIHAN:

Q. You said there are three clerks working for the Justice of the Peace whose responsibility it would be to make this call?

A. That's correct.

Q. Would that be including you?

A. No. Three. I do not make the calls anymore.

Q. So among those three, how is it determined which one actually gets the responsibility for making the call on a particular case?

A. It varies by, you know, who is working, who [p. 23] is in the courtroom, who is doing plea agreements. Whoever is free generally makes the call immediately.

This notation is unusual because it was a pro tem, and the clerk didn't see it, so she didn't make it.

Q. So Justice of the Peace would make the decision, he'd make a notation in the file, and then he'd hand the file to one of the clerks?

A. Right. We usually get them back en masse, four or five files at a time. Sometimes we have 30 people in the courtroom all at one time, and as files are completed, we will get four or five back at a time from the judge.

Q. So then that clerk will take those four or five files and look through them to to [sic] see what has to be done?

A. Right.

Q. And then that clerk is supposed to immediately call the Sheriff's office to notify them that the warrant has been quashed?

A. That's correct.

Q. Does it ever happen that the clerk will not be able to reach the Sheriff's office by telephone?

A. No.

Q. Is there any procedure for checking to make [p. 24] sure that all – that these calls have been made?

A. They are supposed to double-check files before they file them away.

Q. That would be the same clerk responsible for looking at the file to begin with?

A. Right. They do calendar; they did do all the other things they were supposed to do, but not that one portion of it.

Q. Since this case has come up in recent weeks, has your office received telephone calls from the Sheriff's office regarding this?

A. Not from the Sheriff's office, no.

Q. From some other agency?

A. The County Attorney asked for information on it.

Q. Did the Phoenix police call your agency regarding this?

A. No, they have not.

MR. WHELIHAN: That is all I have, Your Honor.

MR. STUART: I have a –

THE COURT: Did you offer Exhibit 1, counsel?

MR. STUART: Excuse me?

THE COURT: Were you going to offer Exhibit 1?

MR. STUART: I am, Your Honor. To make things better, I will offer Exhibit 1 in evidence at this point.

[p. 25] THE COURT: Any objection, counsel?

MR. WHELIHAN: No, Judge.

THE COURT: Exhibit 1 will be admitted.

REDIRECT EXAMINATION

BY MR. STUART:

Q. Is it normal procedure, standard practice in your office, that when the judge issues a warrant quashed, that a call be made, and that call be notated in the file?

A. Yes, it is.

Q. Are your clerks trained to do that?

A. Yes. Could I clarify something to explain how it happened?

Q. Sure.

A. We just recently had a change of judge. Our judge was defeated in election. So right at this time, we had pro tems in, not our regular judge. On December 12th is our old judge's writing. He always made his notations at the very bottom: "Prepare warrant; quash warrant."

He would write in great big letters, so he would, you know – it would come to your attention.

[p. 26] So we had a pro tem that wrote it small in the middle of the thing, setting it for pretrial. That is why the Clerk missed it.

MR. WHELIHAN: Objection. This is all speculation on the part of the witness.

THE COURT: Sustained.

MR. STUART: I have no further questions, Your Honor.

THE COURT: Anything further? May this witness be excused?

MR. WHELIHAN: Just recross. I just wanted to ask something I believe was raised, which is having to do with the training of the clerks.

RECROSS-EXAMINATION

BY MR. WHELIHAN:

Q. What are the names of the three clerks that would have been responsible on December 19, or would have been employed by the Justice of the Peace December 19th?

A. Would have been Trudy Hunter, Mary Ellen Munguia and Janice Daniels were the three clerks at that time.

Q. How long has Trudy been working?

A. Trudy is assistant supervisor, and she's [p. 27] been there four years.

Q. And how long has Mary Ellen been working there?

A. She's worked there almost four years, also.

Q. And how long has Janice been working?

A. Janice was a little over a year as a transfer from Scottsdale Justice Court, where she worked a year.

It probably would have been Mary Ellen or Trudy that should have quashed it. Janice was mostly inputting tickets and doing additional work.

Q. In your eight years as a chief clerk with the Justice of the Peace, have there been other occasions where a warrant was quashed but the police were not notified?

A. That does happen on rare occasions.

Q. And when you say rare occasions, about how many times in your eight years as chief clerk?

A. In my particular court, they would be like maybe one every three or four years.

Q. When something like this happens, is anything done by your office to correct that problem?

A. Well, when this one happened, we searched all the files to make sure that there were no other ones in there, which there were three other ones on that same [p. 28] day that it happened. Fortunately, they weren't all arrested.

MR. WHELIHAN: That is all I have. Thank you.

THE COURT: Anything further, Mr. Stuart?

MR. STUART: No, Your Honor.

THE COURT: May this witness be excused from further attendance?

MR. STUART: Yes.

MR. WHELIHAN: Yes,

THE COURT: You may step down. You are excused from further attendance.

(Witness excused.)

MR. STUART: Your Honor, I would like to call Emily Luna.

EMILY LUNA,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

[p. 29] DIRECT EXAMINATION

BY MR. STUART:

Q. Could you state your name, please?

A. Emily Luna.

Q. What is your occupation?

A. Sheriff's records clerk.

Q. And where do you work?

A. At the Sheriff's office.

Q. How long have you worked there?

A. It will be two years in September.

Q. Are you assigned to any particular – you said the Records Department. But is that broken down into any littler departments?

A. Yes.

Q. And where do you work?

A. Well, we rotate, so it depends.

Q. Where are you working now?

A. I am working in O.I.C., Operations Information Center.

Q. And would you have been working there in December and January – December of '90 and January of '91?

A. Yes.

[p. 30] Q. Are you familiar with the procedures in the Sheriff's office for – what you do when a call comes in quashing a warrant?

A. Yes.

Q. What are those procedures? What do you do?

A. The call comes in through the court clerk of where the warrant is issued out of. We have recall warrants list, which is when that call comes in, we go and write down there. We get out the sheet. We go and put the date that we received the call, the time, the person that is calling the quash in, and the court that the quash is from. We ask the last name, first name, middle name of the subject that the warrant is on, his date of birth, the warrant number and the date that it was issued.

Q. And this would all be written down on a record somewhere?

A. It is called a warrant recall list.

Q. After that information is taken, what is done to recall the warrant?

A. We pull the active file out, and we pull the jacket, verify that that is the right information, the right warrant that we have pulled out.

On the active card, we go ahead and put the date that the call was received, by whom, and what court [p. 31] called it in. We go ahead and clear it out of the system.

Once it is cleared, we go ahead and run a warrant check to make sure that it has been cleared. And we date it and put our A number and stamp it cancelled.

Q. Did you have occasion to check records of the Sheriff's office, the records that you referred to, with respect to a person named Isaac Evans?

A. Did I, myself?

Q. Were records checked on Isaac Evans?

A. Yes.

Q. Do you have those records with you?

A. Yes.

Q. Do you know whether they reflect the – you heard the testimony from Frances Crossman when you were in court?

A. Yes.

Q. With respect to that warrant that the testimony was where a warrant was issued on December 13, 19___

MR. WHELIHAN: I'm going to object to this. I don't know which records he's referring to. There was a reference to the checking the records.

THE COURT: I don't know what records you are referring to, either, counsel. I think maybe you ought

[p. 32] to have them marked if they exist so counsel will get an opportunity to look at them, too, before she testifies from them.

BY MR. STUART:

Q. Did you bring copies, or are these the originals?

A. Those are copies.

Q. Let me show you what has been marked State's Exhibit 2 for identification. These records, what are they?

A. It is called a warrant recall list. And these are the quashes that we called – got called on to have the warrant quashed.

Q. And this is the recall list that you talked about?

A. Yes.

Q. Let me show you that list. What are the dates contained on that list?

A. Through December 18 – through December 20.

Q. Is there notation on that list that a quash was called in on Isaac Evans?

A. No.

MR. WHELIHAN: I'm going to object and move to strike on the basis that she's testifying to hearsay.

THE COURT: Yeah. The Exhibit is not in [p. 33] evidence. Sustained.

You should have objected first, counsel.

MR. STUART: Excuse me?

THE COURT: She's testifying from an exhibit not in evidence, but, no, as to just what the dates were, is that what you are objecting to?

MR. WHELIHAN: No.

THE COURT: The last question –

MR. WHELIHAN: The last question, I object and move to strike.

THE COURT: The dates come in, but the last question doesn't until it gets into evidence.

MR. STUART: Your Honor, at this time, I would move Exhibit 2 into evidence.

THE COURT: Do you have any objection?

MR. WHELIHAN: I'm not sure that a proper foundation has been laid.

THE COURT: Yeah. They are records kept in the ordinary course of business in the Sheriff's office. She said she uses that list routinely and makes it up on a daily basis.

The objection is overruled. Exhibit 2 may be admitted.

Now you can ask your question.

MR. STUART: Thank you, Your Honor.

[p. 34] BY MR. STUART:

Q. With respect to Exhibit 2, does that indicate that a call was ever received quashing the warrant on Isaac Evans?

A. No.

MR. STUART: Your Honor, I have nothing further of this witness.

THE COURT: You may examine.

CROSS-EXAMINATION

BY MR. WHELIHAN:

Q. Miss Luna, based on just looking at the records, you are not able to say whether the call was received and the person receiving the call failed to write it down, just from looking at the records, are you?

A. No. I'm pretty sure we wouldn't have received it.

Q. Based on the regular practice?

A. Right.

Q. But you don't know whether in this case the call was received and the clerk failed to make a notation, do you?

A. No.

Q. Do you know who would have answered the [p. 35] phone December 19th or December 20th?

A. No. Well, it is just that we rotate shifts, and I am not sure who was working on that day.

MR. WHELIHAN: That is all I have.

MR. STUART: I don't believe I have any other questions, Your Honor.

MR. WHELIHAN: I'm sorry. If I may?

THE COURT: Did you forget something?

MR. WHELIHAN: Yes.

THE COURT: Go ahead.

BY MR. WHELIHAN:

Q. I just wanted to clarify some of your testimony on direct.

When the call is received, a notation is made on the recall warrant list, and then you said that the warrant is pulled out. Can you explain what you mean by that?

A. Well, the in file.

Q. So this is a piece of paper that you actually pull out of a file?

A. It is a jacket. The jacket is pulled.

Q. And then you make notations on a card that is inside the jacket?

A. No. The card is actually in a different file, so we have the jacket against the wall, and then [p. 36] the active file is in the file drawer.

Q. After going to the jacket and then going to this card that we are referring to, then the procedure is to clear out the system. Is that what you said?

A. Clear the warrant out of the system.

Q. And what does that involve?

A. You have to actually – do you want the format.

Q. On a computer, you make an entry onto a computer that removes it from the data bank of the computer. Is that right?

A. Yes.

Q. And then you run a check to see whether –

A. You run it through the computer again to make sure it shows cleared.

Q. Is there a procedure for police officers to call to confirm whether the warrant has been quashed?

A. Yes.

Q. Whether a warrant is still –

A. Yes.

Q. That would be to call your records department?

A. Yes.

Q. And then you would then check?

A. We go ahead and check the active file, and [p. 37] if there was one, then we would go ahead and pull the jacket from the file.

MR. WHELIHAN: No further questions.

MR. STUART: Your Honor, if I might?

THE COURT: Certainly.

REDIRECT EXAMINATION

BY MR. STUART:

Q. In this case, if someone had called to check the warrant on Isaac Evans, they would have found the warrant to be active. Is that correct?

A. Yes.

MR. STUART: I have nothing further, Your Honor.

THE COURT: May this witness be excused from further attendance?

MR. STUART: Yes. Your Honor.

MR. WHELIHAN: Thank you.

THE COURT: Thank you. You may step down. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

[p. 38] MR. STUART: Your Honor, the State has no further evidence on this, on the motion.

THE COURT: Defense?

MR. WHELIHAN: We will not be introducing any further evidence, Your Honor.

THE COURT: It is your motion to suppress, counsel.

MR. WHELIHAN: Thank you, Judge.

The defense is moving to suppress this evidence because it was obtained as a result of an invalid arrest. The testimony has shown that the warrant was quashed on December 19th, and that the only reason Officer Sergeant arrested Mr. Evans was that warrant. Since that warrant was invalid, the arrest is invalid, and the fruits of

the arrest, the marijuana cigarette and the other marijuana found in the car, are fruit of the poisonous tree of the invalid arrest. Therefore, they should be suppressed.

The State's response to the defense's position, I think, can be divided basically into two arguments. In the first argument, they say well, the subjective state of mind of the police officer doesn't matter.

THE COURT: That is not really an issue in the case. The arrest was made on the warrant. That is clear [p. 39] from the evidence. We don't have that issue.

MR. WHELIHAN: So I take it that the first argument that the State makes may be put aside.

THE COURT: That's correct.

MR. WHELIHAN: Then I take it that the issue is whether the good faith exception to the exclusionary rule applies.

Our position is that this is all State action, and that the exclusionary - the purposes of the exclusionary rule would be served here by making the clerks for the court, or the clerk for the Sheriff's office, whoever is responsible for this mistake, to be more careful about making sure that warrants are removed from the records, and saving citizens from unwarranted intrusions on their right to move around.

In the case of State versus Greene, the defendant was arrested on a warrant that had been quashed eight months before. The State finds a distinction in that case in that here there was only 17 days that had passed since the warrant was quashed.

There was testimony that in order to get the word out, it was merely a matter of making a phone call and making an entry into the computer. This is the computer age. We don't need weeks of delay in order to get the word out.

[p. 40] There is also – the State also argues that this was during the holiday season, and I guess that somehow excuses it. This may explain what happened, but it doesn't excuse it.

THE COURT: Mr. Stuart?

MR. STUART: Thank you, Your Honor.

If I might, I would like to make one point on the first part of my response.

THE COURT: You certainly may.

MR. STUART: I think it is a valid response. If an officer arrests – walks up to somebody and says, "You are under arrest for disorderly conduct," and arrests him, searches him and finds something, it turns out really there was no disorderly conduct that would sustain an arrest, but in fact the guy was validly trespassing and the officer could have arrested on the trespassing, the courts would look to the objective circumstances, see that there could have been a valid arrest for trespassing, if you will, and uphold that search based on the objective circumstances and not on what the officer had in his head, and the officer was mistaken in what he articulated, but there was a valid arrest.

THE COURT: Mr. Stuart, the fact is that the police officers do not arrest for driving on suspended

license. This officer testified that he ordinarily does [p. 41] not arrest.

MR. STUART: I understand that, Your Honor.

THE COURT: And in this case, he would not have arrested him for driving on a suspended license. So let's get to the issue of the warrant. That is what he arrested him on.

MR. STUART: I am moving on. He could have arrested –

THE COURT: There is no question, he could have arrested him for driving the wrong way on a one-way street, probably. I don't know whether that is a criminal or civil traffic violation anymore, but, you know, you can arrest people for lots of things. The fact is he was arrested on the warrant, and there is no doubt that is what he was arrested for.

MR. STUART: That's correct. Let me move on to the good faith.

I think the State has made the case here that distinguishes this case from State versus Greene. The Court is aware in Greene that the case turns on the fact that essentially the court assumed it was the South Tucson Police Department's fault that this warrant wasn't quashed. They say something to the effect there is no evidence one way or the other, but we're going to go ahead and assume that that is the case, and it is going [p. 42] to serve the purpose of the exclusionary rule to suppress the evidence in that case, and that is going to teach the police department a lesson, essentially, that they are going to have to keep these up to date.

In this case, the State has presented evidence that it was not the police department's doing, nor was it the Sheriff's department doing, but it was the doing of the justice court. Through their negligence, or whatever term you want to use, they didn't pick it up; they didn't notify the Sheriff's office, who then couldn't take it out of the computer.

The Officer did what he had to do; what he's required by law to do when he finds a warrant. As far as he knew, it was a valid warrant.

If you read the court notes in the Greene case, that they even say that; that the Officer's action would fall within the good faith exception other than the fact that the police agency, itself, they found, was the one who didn't take it out.

In this case, it is not the police agency; it is the justice court. It is not going to serve the ends of the exclusionary rule to suppress the case here. It makes no difference to the justice court. They are not going to change their practice. It is not going to change the practice of the police department in this [p. 43] case, because they are acting on a valid warrant, or a warrant that to them was valid. They could not do any more than they did to find out what had happened.

You know, all the cases on the exclusionary rule, the case that the State has stated, Nahee, the Green case, itself, indicates what the purpose is. And the purpose is not going to be served here. It is not going to deter any kind of police conduct to suppress the evidence in this case. The police did what they should have done. The police did what they had to do here. And it was the fault,

if you will, of the Justice Court for not entering that. And suppressing the evidence here is not going to affect the Justice Court at all.

The State would submit, based on its argument and the motion, that – or its response, that the motion should be denied.

THE COURT: It is my understanding, Mr. Stuart, that it is State action that triggers the entire issue of motions to suppress. And whether that State action is the police, the Sheriff, the Court, or anybody else. You make a distinction, it being different parts of State action.

MR. STUART: I do. It is a different situation because it is the exclusionary rule at work here. And the good faith doctrine. It is not – it is not the [p. 44] typical State action.

If you look at the Greene case –

THE COURT: I looked at it very carefully.

MR. STUART: They make it clear –

THE COURT: Well, they make it clear that what they are trying to do is deter negligence; in that case, to deter the negligence of the Tucson – South Tucson Police Department, or whatever. And in this case, perhaps the negligence of the Justice Court, or the negligence of the Sheriff's office. But it is still the negligence of the State.

See, the problem is I think the Greene case is really not that good. I think the police officer is bound to arrest. I think that is his duty. I think he would be derelict in his duty if he failed to arrest.

MR. STUART: That's correct.

THE COURT: There is no question in my mind about it. But unfortunately, they didn't empower me to overrule the Court of Appeals. And, you know, the distinction between 17 days and eight months is a distinction without a difference. The fact is if it were 24 hours, you might be able to find some reason.

The fact is the Court of Appeals has held – in my opinion, I would not have held the same way – but the Court of Appeals has held that when you arrest on an [p. 45] invalid warrant which was quashed, and should have been taken out of the computer, that the evidence seized as a result of that arrest has to be quashed.

I think the police did exactly what they had to do. But the Court of Appeals doesn't. And perhaps Division One of the Court of Appeals may feel differently about it than Division Two. But I'm bound by Division Two's decisions also. And their decision says it has to be quashed. It has to be suppressed.

MR. STUART: I understand. But the State's contention, I'm sure the Court understands –

THE COURT: I understand.

MR. STUART: This doesn't fall within the ambit of Greene, because it wasn't the police department's fault. And we have proved that.

THE COURT: I understand. But it is the State's fault. I can't find a distinction between State action, whether it happens to be the police department or not.

You know, I told you, I would have held differently. I can't overrule the Court of Appeals. The Supreme Court, apparently, as far as I can determine, there are no other cases decided by Division One on this same issue.

MR. STUART: I have not found one on this particular point.

[p. 46] THE COURT: Right. Neither have I.

Motion to Suppress is granted.

MR. STUART: Your Honor, in light of that, obviously, the State is not going to be prepared to proceed to trial.

THE COURT: I take it you would like to dismiss without prejudice?

MR. STUART: That's correct, Your Honor. We are contemplating appealing to see if Division One will disagree.

Thank you, Your Honor.

THE COURT: Any objection to the motion to dismiss without prejudice?

MR. WHELIHAN: No, Judge. I would ask that it would be with prejudice.

THE COURT: Yeah. No, I think the State has an absolute right to appeal that issue.

It will be ordered granting the State's motion to dismiss without prejudice.

MR. STUART: Thank you, Your Honor.

THE COURT: Court will stand at recess.

[p. 47] I Michael N. Vacca, do hereby certify that the foregoing pages constitute a full accurate typewritten record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED this 22nd day of May, 1991

/s/ Michael N. Vacca
Official Court Reporter

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

THE STATE OF ARIZONA, Appellant, vs. ISAAC EVANS, Appellee.	) No. 1 CA-CR 91-663)) Maricopa County Superior) Court No. CR 91-00513))

APPELLANT'S OPENING BRIEF

(Filed Jun. 28, 1991)

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STATEMENT OF THE CASE

The State charged appellee with possession of marijuana, a class 6 felony. (Instruments, Item No. 15.) It later added an allegation that appellee had five prior felony convictions. (*Id.*, Item No. 19.)

On March 27, 1991, appellee filed a motion to suppress the marijuana, arguing that it was the fruit of an invalid arrest. (*Id.*, Item No. 28.) At the evidentiary hearing on the motion, Officer Bryan Sargent testified that he had stopped appellee for driving the wrong way on a one-way street. (R.T. of Apr. 15, 1991, at 6.) When the officer asked for appellee's driver's license, appellee responded that he did not have one because it had been suspended. (*Id.*, at 7.) Officer Sargent then obtained appellee's name and ran a computer check on it. (*Id.*)

The computer showed that appellee's license was suspended and that there was a misdemeanor warrant for his arrest. (*Id.*, at 8.) After checking with the I-Bureau and being told that the warrant was still valid, Officer Sargent told appellee he was under arrest and began to handcuff him. (*Id.*, at 8, 12.) Officer Sargent testified that he would not have arrested appellee had it not been for the warrant. (*Id.*, at 13.) Appellee's left hand was clenched, making it difficult to get the handcuffs on, so the officer asked him to relax his hand. (*Id.*, at 9.) As appellee opened his hand, a cigarette fell to the ground. (*Id.*) Officer Sargent's partner picked the cigarette up and the officers determined that it was a marijuana cigarette. (*Id.*, at 9-10.)

Officer Sargent then searched appellee's car and found a baggie of marijuana under the passenger seat. (*Id.*, at 10-11.) He also found rolling papers and marijuana

residue in the purse of the woman who had been sitting in the passenger seat. (*Id.*, at 11.)

Frances Crossman, the chief clerk for the East Phoenix Justice Court, testified that the warrant had been issued on December 12, 1990, after appellee failed to appear on several traffic tickets. (*Id.*, at 18-19.) On December 19, 1990, however, appellee had appeared before a pro tem judge and the warrant had been quashed. (*Id.*, at 19.) Normally, the court clerk then calls the Sheriff's Office to tell them the warrant had been quashed. (*Id.*) There was no indication in appellee's justice court file that the Sheriff's Office had been notified of the quashed warrant. (*Id.*, at 19, 22.) After the clerk's office learned that the quashing of appellee's warrant had not been communicated to the Sheriff's Office, they checked other warrants quashed on the same day as appellee's and found three others where the Sheriff's Office had not been notified. (*Id.*, at 27-28.) The records clerk from the Sheriff's Office confirmed that there was no record of a call from the justice court quashing appellee's warrant. (*Id.* at 34.)

At the end of the hearing, the trial court granted the motion to suppress. (*Id.*, at 45-46.) It then granted the State's motion to dismiss the case without prejudice. (*Id.*)

The State filed a timely notice of appeal. (Instruments, Item No. 34.) This Court has jurisdiction pursuant to Ariz. Const. Art. 6, §9, and A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MOTION TO SUPPRESS.

The trial court based its ruling on the theory that the marijuana was the fruit of an unlawful arrest of appellee even though the officer had no knowledge that the arrest warrant had been quashed. Although it disagreed with the case, the trial court felt that *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), required suppression of the marijuana. Appellant submits that the *Greene* decision does not control here, and that the exclusionary rule does not require suppression of the marijuana.

The purpose of the exclusionary rule is to deter future police conduct by precluding evidence obtained as a result of police violations of a defendant's constitutional rights. *Michigan v. Tucker*, 417 U.S. 433, 94 S.Ct. 2537, 41 L.Ed.2d 182 (1974). Thus, in applying the rule, it is important to focus upon *whose* conduct is involved. *State v. Nahee*, 155 Ariz. 114, 745 P.2d 172 (Ct. App. 1987).

Here, there is no police misconduct to be deterred by applying the exclusionary rule. The arrest occurred a little more than two weeks after the warrant had been quashed. Before Officer Sargent arrested appellee on the warrant, he contacted the I-Bureau and was told that the warrant was still valid. The evidence shows that the justice court clerk's office had failed to inform law enforcement authorities that the warrant had been quashed. No negligence or misconduct was attributable to the police department. Thus, when Officer Sargent arrested appellee, he was acting on a good faith belief

that the warrant was valid. *See* A.R.S. §13-3925. Accordingly, the trial court should not have suppressed the marijuana.

The *Greene* decision does not require a different result. After a police officer stopped Greene for a traffic violation, a records check showed an outstanding warrant from the City of Tucson. The officer then arrested Greene and found narcotics in his pocket during a search incident to that arrest. The police later discovered that the city court had quashed the warrant eight months before Greene's arrest. Division Two of the Court of Appeals made the following statements in explaining its decision to affirm the trial court's order suppressing the narcotics:

> If police misconduct, whether it be negligent or deliberate, caused or contributed to the arrest notation being in the computer system, the police department would be responsible for not keeping its computer entries up to date. No evidence was presented to the trial court establishing that the police department was blameless in having the arrest warrant notation in its computer system.

State v. Greene, 162 Ariz. at 384, 783 P.2d at 830. The court concluded that, under these circumstances, application of the exclusionary rule would tend to deter the police department from deliberately or negligently failing to keep its records up to date.

In this case, unlike *Greene*, the State presented evidence showing that the justice court clerk's office, not the police department, was responsible for not removing appellee's warrant from the system. The police department can hardly be termed negligent for failing to

remove a less than 3-week-old warrant when it had received no notice from the justice court that the warrant had been quashed. Since there is no police misconduct to deter by application of the exclusionary rule, the trial court abused its discretion in granting the motion to suppress.

CONCLUSION

The evidence established that the police had no reason to know that the arrest warrant for appellee had been quashed. The arrest of appellee was based on a good faith belief that the arrest warrant was valid. Therefore, based upon A.R.S. §13-3925 and the rationale underlying the exclusionary rule, the trial court abused its discretion in suppressing the evidentiary fruits of that arrest.

RESPECTFULLY SUBMITTED this 28th day of June, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY
ATTORNEY

By /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

[Certificate of Service Omitted in Printing]

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellant, v. ISAAC EVANS, Appellee.	No. 1 CA-CR 91-663 Maricopa County Superior Court No. CR-91-00513

APPELLEE'S ANSWERING BRIEF

DEAN W. TREBESCH
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STATEMENT OF THE CASE

Evans generally accepts the state's presentation of the case, with three exceptions.

The state asserts that Officer Sargent checked, with the I-Bureau, the validity of the warrant *before* he handcuffed and arrested Evans. (Opening Brief at p. 1, hereafter OB.) This is contrary to the record. On direct-examination Sargent made it reasonably clear that he arrested Evans, and handcuffed him too, before he checked with the I-Bureau. (R.T. 8, lines 13-19, April 15, 1991.) Later, still on direct, Sargent made this explicit. (*Id.* at 11, lines 21-25.)

Secondly, the state asserts that "the quashing of appellee's warrant had not been communicated to the Sheriff's Office." (OB, p. 2.) But this is only one inference that may reasonably be drawn from the record. More importantly, it is not the inference this Court is required to proceed on. The other inference is that the call was made but the justice court failed to make a note of it. The trial judge very quickly understood that this was the alternate, and equally reasonable, inference that could be drawn; because he realized it he forced the justice court clerk to concede that she did not know whether the call had been made or not. (R.T. 22, lines 1-8, April 15, 1991.)

Thirdly, the state asserts the justice court found, for the same day, three other cases, "where the Sheriff's Office had not been notified." (OB, p. 2.) Again, this is only one inference. All the clerk's office could be sure it found was that there were three other cases where no notation was made. (R.T. 27-28, April 15, 1991.)

Finally, with respect to the Statement of the Case in the Opening Brief the reader will observe that Evans, it is alleged, "had five prior felony convictions." (OB, p. 1.) Why does the state tell us this since it has absolutely nothing to do with the issue on appeal? Does the state wish to have the case decided on the basis that Evans is a bad guy? Perhaps the state will tell us in its reply brief.

ARGUMENT

THE TRIAL COURT, IN GRANTING EVANS' MOTION TO SUPPRESS, DID NOT ABUSE ITS DISCRETION.

The trial court's ruling on a motion to suppress must be upheld unless it is shown that he clearly abused his discretion. *State ex rel. Collins v. Superior Court*, 132 Ariz. 180, 644 P.2d 1266 (1982). Here there is no showing of any abuse at all.

This case, like many cases, turns upon how one views the record. The rule is that, on appeal, the facts must be viewed in that light which will sustain the ruling of the trial court on the motion to suppress. *State v. Gerlaugh*, 134 Ariz. 164, 654 P.2d 800 (1982), Supplemented, 135 Ariz. 89, 659 P.2d 642 (1983). Evans pointed out earlier in this brief that there are two inferences, equally reasonable, that can be drawn from this record. One is that the justice court failed to call the sheriff about the quashed warrant. The other is that the justice court did call the sheriff, but forgot to make a note of it. Between these inferences, the latter is the one that will sustain the trial court's ruling. This Court is therefore required to take it

as a *fact* that the justice court called the sheriff and told him that the warrant had been quashed. *Gerlaugh*.

Given that fact, *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (App. 1989) is on all fours with this case and should control its outcome unless this Court wishes to disagree with its Division Two brethren.

CONCLUSION

On the basis of *State v. Greene* the appellee asks that the trial court be affirmed.

Respectfully submitted,

DEAN W. TREBESCH
MARICOPA COUNTY
PUBLIC DEFENDER

By /s/ James H. Kemper
JAMES H. KEMPER
Deputy Public Defender
Attorney for Appellee

[Certificate of Service Omitted in Printing]

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

THE STATE OF ARIZONA,)
Appellant,
vs.
ISAAC EVANS,
Appellee.

) No. 1 CA-CR 91-663
) Maricopa County Superior Court No. CR 91-00513

APPELLANT'S REPLY BRIEF

RICHARD M. ROMLEY
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ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MOTION TO SUPPRESS.

The question presented here is whether the exclusionary rule requires the suppression of evidence obtained following an arrest, where that arrest was based on an outstanding warrant that was later found to have been quashed. Appellant submits that the purpose of the exclusionary rule (to deter future police misconduct) is not served by applying it in this case.

The record shows that Officer Sargent saw appellee commit a traffic offense: driving the wrong way on a one-way street. When the officer stopped appellee for that offense, appellee admitted he was guilty of another offense: driving on a suspended license. The officer then ran a computer check and confirmed that appellee's license was suspended and also learned that there was a misdemeanor warrant for appellee's arrest. He also checked with the I-Bureau and was told that the warrant was still valid. (R.T. of Apr. 15, 1991, at 6-8.) Based upon this record, there is no police misconduct to deter by applying the exclusionary rule. Officer Sargent did everything that can be expected of an arresting officer.

Appellee, however, relying on *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), argues that the police department failed to keep its computer entries of outstanding warrants up to date, and that future misconduct of this sort will be deterred by application of the exclusionary rule. The facts in this case are distinguishable from those in *Greene*. Appellee's arrest occurred less than 3 weeks after the warrant had been quashed, not

more than 8 months as in *Greene*. Also, the prosecutor, unlike the prosecutor in *Greene*, presented evidence supporting the conclusion that the police department was blameless in having the warrant in its computer system.

Further, appellant submits that *Greene* is not well-reasoned. The rationale behind the exclusionary rule is stretched a bit thin when the rule is applied to deter clerical workers in the police department rather than police officers in the field. The situation in this case comes within the provisions of A.R.S. §13-3925: a police officer making an arrest based on a good faith belief that the arrest warrant was valid. Therefore, the trial court erred in granting the motion to suppress.

CONCLUSION

The evidence established that the police had no reason to know that the arrest warrant for appellee had been quashed. The arrest of appellee was based on a good faith belief that the arrest warrant was valid. Therefore, based upon A.R.S. §13-3925 and the rationale underlying the exclusionary rule, the trial court abused its discretion in suppressing the evidentiary fruits of that arrest.

RESPECTFULLY SUBMITTED this 5th day of August, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY
ATTORNEY

By /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA Appellant/Respondent, v. **ISAAC EVANS,** Appellee/Petitioner.	)	No. 1 CA-CR 91-663 Maricopa County Superior Court No. CR-91-00513 **PETITION FOR REVIEW**

Isaac Evans, through counsel undersigned, asks for review by the Arizona Supreme Court. Rule 31.19, A.R.Crim.P., 17 A.R.S.

I. Synopsis Of The Decision Of The Court Of Appeals.

The petitioner's motion to suppress physical evidence, marijuana, was granted in the Superior Court for Maricopa County. The Court of Appeals, in a published opinion, decided that the Superior Court had abused its discretion and reversed by a two to one vote, Judge Claborne dissenting. The opinion is attached.

II. Issues Decided By The Court Of Appeals.

The only issue presented to and decided by the Court of Appeals was whether the trial court abused its discretion in granting the motion to suppress.

III. Material Facts.

On January 5, 1991, at about 6:30 in the evening, Officers Sergent and Lumley of the Phoenix Police Department were sitting in a marked patrol car finishing up some paperwork when they saw a car going the wrong way on a one-way street. It is not difficult to see how this caught their attention since they were parked directly in front of the main police station. They pulled the car over.

This petitioner, Isaac Evans, was the driver. The two policemen got Evans' name, punched it in their computer, found there a misdemeanor warrant for Evans' arrest, arrested him, and then searched Evans and the car. In Evans' hand the officers found a marijuana cigarette. In the car, under the passenger seat, the officers found a baggie of marijuana.

It turned out that the warrant was invalid. It had been quashed, 17 days before, in the justice court from which it issued. The normal procedure when this happens is that any one of three clerks will call the warrant section of the Sheriff's Office to say that the warrant should be taken out of the computer because it has been quashed. Whichever clerk does this, in the normal procedure, will note in the justice court file that she has done it. In this case the justice court file bore no such notation.

None of the three clerks testified. No one could say the call had not been made.

The normal procedure at the warrant division of the Sheriff's Office is this. That division maintains something called a "warrant recall list." When a call comes in from a justice court that a warrant has been quashed the information is written on the "warrant recall list." Then the necessary entries are made to remove the warrant from the computer. A check is run to be sure the warrant has in fact been removed.

The "warrant recall list" had no entry that the Evans warrant was to be quashed. But no one could say the call had not come in.

IV. Why The Petition Should Be Granted.

There are two reasons why this petition should be granted.

A. The majority of the Court of Appeals is in conflict with a critical principle of appellate review, the principle that, on appeal, the evidence must be viewed in the light which will sustain the ruling of the trial court. *State v. Gerlaugh*, 134 Ariz. 164, 654 P.2d 800 (1982). It is difficult to understand this since the majority cited, and therefore paid lip service to this principle. (Slip op. p. 4.)

The majority followed this by pointing out that there were two inferences that could be drawn from the evidence presented at the hearing on the motion to suppress. (Slip op. p. 4, n.1.) Those inferences, equally reasonable, were that the call to remove the warrant had not been

made or that the call had been made, but not memorialized. The inference that would support the decision of the trial court was the latter, but the Court of Appeals majority adopted the former. In so doing it misapplied, while paying homage to, one of the cardinal mechanical principles that controls the way appeals are decided.

The Court of Appeals is a mere error-correction court. This Court is, by contrast, this state's law-articulation court. In this capacity it speaks to the *substance* of a wide variety of issues, from homicide to summary judgment, from the rule making power of the Corporation Commission to the termination of parental rights.

But this Court has failed, for the most part, to spend much time addressing the mechanical principles by which all these substantive issues are decided on appeal. For example, the vast majority, one has to think, of Arizona appellate issues are decided under the abuse of discretion standard. Yet this Court's best exegesis of this standard of review is buried in a footnote. *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983). Footnote 18 to *Chapple* is a wonderful footnote indeed. But the cardinal mechanical principles of appellate review should not be found in footnotes. They should be set forth boldly and clearly in the body of opinions. This Court should grant review in this case so that, in the body of a published opinion, it can explain exactly what it means and how it works to view the facts in that light which will sustain the ruling of the trial court.

B. The majority also held that, regardless of anything else, the trial court should not have granted the motion to suppress because of Arizona's "good faith

exception statute," A.R.S. § 13-3925. (Slip op. pp. 8-9.) This holding, by two members of a Division One panel, is in irreconcilable conflict with the dissent (Slip op. pp. 10-11), with another panel (unanimous) of the same court, *State v. Peterson*, 94 Ariz. Adv. Rep. 58 (1991, Petition for Review filed October 18, 1991), and with Division Two of the same court (unanimous). *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (1989). This Court should grant review to resolve this conflict.

CONCLUSION

For the reasons advanced Evans asks for review of this case. **RESPECTFULLY SUBMITTED** this 26 day of May, 1992.

DEAN W. TREBESCH
MARICOPA COUNTY PUBLIC DEFENDER

By /s/ James H. Kemper
JAMES H. KEMPER
Deputy Public Defender

Copy of the foregoing petition
delivered this 26 day
of May, 1992, to:

GERALD R. GRANT
Deputy County Attorney

By /s/ James H. Kemper
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Deputy Public Defender

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IN THE SUPREME COURT OF THE
STATE OF ARIZONA

STATE OF ARIZONA,	)	No. _____
Appellant,	)	
	)	Court of Appeals
vs.	)	No. 1 CA-CR 91-663
	)	
ISAAC EVANS,	)	Maricopa County Superior
Appellee.	)	Court No. CR 91-00513
	)	
	)	RESPONSE TO
	)	PETITION FOR REVIEW
	)	
_____	)	(Received June 25, 1992)

The State asks this Court to deny the petition for review. Reasons supporting this request are set forth in the following memorandum.

Respectfully submitted this 25th day of June, 1992.

RICHARD M. ROMLEY
MARICOPA COUNTY
ATTORNEY

BY /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

Police officers arrested appellee on an outstanding misdemeanor warrant. As one officer was handcuffing him, appellee dropped a marijuana cigarette. The officer then searched appellee's car and found a baggie of marijuana under the passenger seat.

Appellee later moved to suppress the marijuana, arguing that it was the fruit of an unlawful arrest. At the suppression hearing, the State presented evidence that the misdemeanor warrant had been issued by the East Phoenix Justice Court a little more than three weeks before the marijuana seizure. The warrant had been quashed, however, a week after it was issued. The normal procedure in this situation is that the justice court clerk calls the Sheriff's Office, notifies that office that the warrant has been quashed, and makes a note in the justice court file that the call has been made. There was no notice in appellee's justice court file that the Sheriff's Office had been notified of the quashed warrant. The records clerk from the Sheriff's Office testified that there was no record of a call from the justice court regarding the quashing of appellee's warrant. The trial court granted the motion to suppress, finding that *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), required suppression of the marijuana.

The State appealed from this decision. On May 19, 1992, the court of appeals filed an opinion reversing the trial court's decision.

The State first asks this Court to deny review because the exclusionary rule does not require suppression of the marijuana. The purpose of the exclusionary rule is to deter future police misconduct. *Michigan v. Tucker*, 417 U.S. 433, 94 S.Ct. 2537, 41 L.Ed.2d 182 (1974). The police officers in this case did everything that can reasonably be expected of them. Before arresting appellee, the officer contacted his I-Bureau and was told that the warrant was still valid. The State presented evidence strongly suggesting that the justice court clerk's office had failed to inform law enforcement authorities that the warrant had been quashed. Under these circumstances, there was no police misconduct to be deterred in the future by application of the exclusionary rule.

Second, appellee argues that the court of appeals failed to view the evidence in the light most favorable to sustain the trial court's ruling. This argument is based on the premise that there were two equally reasonable inferences to be drawn from the evidence: one, that the clerk's office had not called the Sheriff's Office, and two, that the call had been made but not memorialized. The State disagrees that these inferences are equally reasonable. Neither the clerk's office nor the Sheriff's Office had any record of the call, and the clerk's office files also contained no records that the Sheriff's Office had been contacted regarding three other warrants quashed on the same day as appellee's. Based on this evidence, the more reasonable inference is that the call was not made and

therefore the trial court clearly abused its discretion in suppressing the evidence.

Third, appellee argues that this Court should grant review to resolve a conflict between divisions of the court of appeals regarding the applicability of Arizona's "good faith exception" statute. Appellee claims that *State v. Peterson*, 94 Ariz. Adv. Rep. 58 (Ct. App., Sep. 5, 1991), and *State v. Greene*, are in conflict with the opinion in this case. *Peterson* and *Greene* are distinguishable on their facts. In *Peterson* the quashed warrant was 5 years old. Also, in neither of those cases did the State present evidence to show that the presence of a quashed warrant in the police department's computer files was not the result of police negligence. In this case, the State presented evidence showing that the justice court clerk's office failed to notify police that the warrant had been quashed. Therefore, the decision in this case is not in conflict with *Peterson* or *Greene*.

In conclusion, appellee has failed to show that the court of appeals erred in deciding this case. Therefore, the State asks this Court to deny the petition for review.

Respectfully submitted this 25th day of June, 1992.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

By /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

Copy of the foregoing
mailed/delivered this
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(5)

No. 93-1660

In The

Supreme Court of the United States

October Term, 1994

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

On Writ Of Certiorari To
The Supreme Court Of Arizona

BRIEF OF PETITIONER

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QUESTION PRESENTED

Where evidence has been seized incident to an arrest based upon a police computer record of an open warrant that had actually been quashed 17 days earlier, does the exclusionary rule require suppression of the evidence regardless of whether police personnel or court personnel were responsible for the quashed warrant's continued presence in the police computer record?

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OPINIONS BELOW

The opinion of the Supreme Court of Arizona is reported at 177 Ariz. 201, 866 P.2d 869 (1994). (Appendix to the Petition [hereinafter Pet. App.] at 1a.) The opinion of the Arizona Court of Appeals is reported at 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992) (Pet. App. at 22a.)

JURISDICTION

The opinion of the Supreme Court of Arizona was filed on January 13, 1994. The petition for writ of certiorari was filed within 90 days of that judgment on April 14, 1994, and was granted on May 31, 1994. The jurisdiction of this Court is properly invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. The Arrest of Evans and Seizure of Evidence

On January 5, 1991, at approximately 6:30 p.m., an officer of the Phoenix Police Department saw a car travelling the wrong way on the one-way street in front of the main police station. (Joint Appendix [hereinafter J.A.] at 16-17.) The officer made a traffic stop of the car and spoke with the car's driver, Respondent Evans. (*Id.* at 17-18.) After Evans told the officer that he had no driver's license because it had been suspended, the officer obtained Evans' name and ran the name on the computer in his patrol car. (*Id.* at 18.)

The computer search showed that Evans' license had been suspended and that he had an outstanding misdemeanor warrant for his arrest. (*Id.* at 19.) The officer would not have arrested Evans for driving on a suspended license, but did arrest him because of the outstanding warrant. (*Id.* at 23-24.) While placing handcuffs on Evans, the officer saw him drop a handrolled cigarette to the ground. (*Id.* at 20.) After determining that the cigarette smelled as if it contained marijuana, the officer searched Evans' car and found a baggie of marijuana under the passenger seat. (*Id.* at 21-22.)

After the arrest, the officer contacted his I-Bureau about the warrant, and was told that the warrant was still good. (*Id.* at 22.)

B. The Motion to Suppress

Prior to his trial on the resulting charge of possession of marijuana, Evans filed a motion to suppress the marijuana because "he was arrested in violation of the Fourth and Fourteenth Amendments to the United States Constitution." (J.A. at 2.) Evans alleged that the misdemeanor warrant had actually been quashed 17 days before his arrest, and argued that the marijuana was therefore the fruit of an unlawful arrest. (*Id.* at 4.) Evans blamed police negligence for the warrant's presence in the computer system and argued that the "good faith" exception to the exclusionary rule recognized by this Court in *United States v. Leon*, 468 U.S. 897 (1984), did not apply "because it was police error, not judicial error, which caused the invalid arrest." (*Id.* at 4-5.)

C. The Evidentiary Hearing

On April 15, 1991, the trial court conducted an evidentiary hearing on the motion to suppress. At that hearing, the State presented testimony from the arresting officer. The State also presented testimony regarding the standard procedure for quashing a warrant and removing it from the Maricopa County Sheriff's Office computer system.

The chief clerk of the East Phoenix Number One Justice Court brought her court's records regarding the warrant on Evans. (J.A. at 15-16.) She testified that the warrant had been issued on December 13, 1990, after Evans had failed to appear in the justice court on the preceding day. (*Id.* at 28-29.) On December 19, 1990, Evans appeared before a *pro tem* judge, who released him

on his own recognizance and quashed the warrant. (*Id.* at 29.)

The chief clerk also described the justice court's standard procedure for quashing a warrant: a clerk places a telephone call to the warrants section of the Maricopa County Sheriff's Office, advises them that a warrant has been quashed, and makes a note on the justice court file stating that the call has been made and indicating the person at the Sheriff's Office to whom the clerk has spoken. (*Id.* at 29, 33, 35.) Evans' justice court file contained no note indicating that the Sheriff's Office had been called about the quashing of the warrant. (*Id.* at 29, 32.)

The chief clerk acknowledged the possibility that a member of the clerk's office had made the call to the Sheriff's Office without making the required notation on the file, but concluded that in this case the call had not been made. (*Id.* at 29, 31-32.) She noted that Evans' case was unusual because a *pro tem* judge had quashed the warrant and he had not made the same notation on the file regarding the quashing of the warrant that the justice of the peace normally made. (*Id.* at 32, 35.) After she learned that Evans' warrant had remained in the Sheriff's Office computer system after the justice court had quashed it, the chief clerk conducted a search of the court files. (*Id.* at 37.) She discovered warrants in three other cases that had been quashed on the same day that Evans' warrant had been quashed; those three other warrants, like Evans', remained in the computer system and the corresponding justice court files, like Evans', contained no notations indicating that the Sheriff's Office had been informed. (*Id.*)

The State also presented testimony from a records clerk with the Maricopa County Sheriff's Office. She outlined the Sheriff's Office standard procedure when it receives a call that a warrant has been quashed: the date and time that the call was received, the name of the person making the call, and the court that the call is noted on the "recall warrants list"; the first, last and middle names of the person named in the warrant, his date of birth, and the warrant number and the date it was issued are obtained from the caller; the information received is compared with the information contained in the Sheriff's Office active file to verify that the information received matches that in the file; notations are made in the active file; an entry on the computer is made to clear the warrant from the system; finally, a warrant check is run on the system to make sure the quashed warrant has been removed. (*Id.* at 39-40, 45.)

The records clerk checked the Sheriff's Office file regarding the warrant on Evans and found no record that a call was ever received quashing that warrant. (*Id.* at 40-43.)

D. The Trial Judge's Ruling

The trial judge found that it made no difference whether justice court personnel or law enforcement personnel were to blame for the warrant's continued presence in the computer system. (*Id.* at 51-52.) He then granted the motion to suppress. (*Id.* at 53.)

E. The Appeal

The State appealed from the ruling granting the motion to suppress. On May 19, 1992, in a 2-1 decision, Division One of the Arizona Court of Appeals reversed. The court of appeals first distinguished an Arizona appellate decision the trial judge had relied on by finding that in this case there was "no evidence that the arresting officers or the Phoenix Police Department were negligent in any way." (Pet. App. at 31a.) It went on to state that the trial judge had apparently overgeneralized the rationale behind the exclusionary rule. (*Id.* at 32a.) After noting this Court's repeated statements that the purpose of the exclusionary rule is to deter police misconduct, the court of appeals found that the police officers' conduct was objectively reasonable under *Leon*, that the clerical error that caused the quashed warrant to remain in the computer system was outside the control of the Phoenix Police Department, and that the purpose of the exclusionary rule would not be served by suppressing the marijuana. (*Id.* at 32a, 34a-35a.)

Evans then filed a petition for review by the Arizona Supreme Court. The supreme court took review and on January 13, 1994, in a 4-1 decision, vacated the court of appeals' decision and affirmed the suppression of the marijuana. The supreme court held that even if the responsibility for the computer error rested with the justice court, "it does not follow that the exclusionary rule should be inapplicable to these facts." (*Id.* at 5a.) The supreme court concluded that the exclusionary rule applied and required suppression of the marijuana. (*Id.* at 11a.)

SUMMARY OF ARGUMENT

The exclusionary rule is not a personal constitutional right of the aggrieved party, but a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect. The primary purpose of the exclusionary rule is to deter future unlawful police misconduct, and its application is restricted to those situations where that purpose is effectively advanced. The police officer in this case acted in an objectively reasonable manner when he arrested respondent because a computer search informed him there was an outstanding warrant for respondent's arrest. Even though the warrant had actually been quashed, the warrant's continued presence in the computer was not the fault of police personnel, but of court personnel. There was no unlawful police misconduct to be deterred in this case. Therefore, the Arizona Supreme Court erred in applying the exclusionary rule to suppress the evidence seized pursuant to the arrest.

ARGUMENT

The Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands. Thus, this Court has held that the exclusionary rule is not a personal constitutional right of the person whose Fourth Amendment rights have been violated, but a judicially created remedy designed to safeguard Fourth Amendment rights *generally* through its deterrent effect. *United States v. Leon*, 468 U.S. at 906;

United States v. Calandra, 414 U.S. 338, 348 (1974). Accordingly, whether to apply the exclusionary rule in a particular case is an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct. *Leon*, 468 U.S. at 906; *Illinois v. Gates*, 426 U.S. 213, 223 (1983).

Applying the exclusionary rule cannot cure the invasion of a defendant's rights he has already suffered. *Illinois v. Krull*, 480 U.S. 340, 347 (1987). In addition, application of the rule has substantial costs, as it often deprives the truth seeking process of relevant and trustworthy evidence. *Michigan v. Tucker*, 417 U.S. 433, 450 (1974). Further, indiscriminate application of the rule may well generate disrespect for the law and administration of justice. *Leon*, 468 U.S. at 908. Therefore, application of the rule is restricted to those cases where its remedial purpose will be most effectively served. *Calandra*, 414 U.S. at 348.

The primary purpose of the exclusionary rule is to deter future unlawful police misconduct. *Id.* at 347. Thus, evidence obtained from a search should be suppressed only if the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment. *United States v. Peltier*, 422 U.S. 531, 542 (1975).

The exclusionary rule is not designed to punish the errors of judges and magistrates. *Leon*, 468 U.S. at 916. Judges and magistrates are not members of the law enforcement team, and the "threat of exclusion thus cannot be expected significantly to deter them." *Id.* at 917. Thus, where a judge, not a police officer, makes "the

critical mistake" that leads to a Fourth Amendment violation, the exclusionary rule should not be applied. *Massachusetts v. Sheppard*, 468 U.S. 981, 990 (1984). "Penalizing the officer for the magistrate's error, rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Leon*, 468 U.S. at 921.

In this case, the police officer's check of the computer in his patrol car informed him that there was an outstanding warrant for Evans' arrest. The officer, who had already seen Evans commit one violation of the law (driving the wrong way on a one-way street) and had heard Evans admit a second violation (driving with a suspended driver's license), arrested Evans based on the outstanding warrant. Evans did not tell the officer that the warrant had been quashed two weeks earlier. And, when the officer checked with his own police department's I-Bureau after the arrest, he was again told that there was an outstanding warrant for Evans' arrest. This officer "took every step that could reasonably be expected" of him. *Sheppard*, 468 U.S. at 989. He had no knowledge, and cannot properly be charged with knowledge, that the warrant had been quashed. The "critical mistake" that caused the Fourth Amendment violation in this case was made by justice court personnel who failed to have the quashed warrant removed from the computer system. Under these circumstances, the exclusionary rule should not be applied because doing so will not serve the rule's primary purpose.

In affirming the trial court's decision to suppress the marijuana, the Arizona Supreme Court declined to follow the framework this Court has established for determining whether to apply the exclusionary rule. First, the Arizona

Supreme Court focused on the fact that Evans' Fourth Amendment rights had been violated when he was arrested on a warrant that had been quashed two weeks earlier. That fact, however, was not at issue on appeal. Petitioner's position throughout these proceedings has been that despite the Fourth Amendment violation, the exclusionary rule should not be applied. As this Court has held, whether a Fourth Amendment violation has occurred is a separate issue from whether the exclusionary rule should be applied. *Leon*, 468 U.S. at 906; *Gates*, 426 U.S. at 223.

Second, the Arizona Supreme Court found it "unnecessary" to analyze the purposes served by the exclusionary rule. (Pet. App. at 4a, n. 1.) That position, however, contradicts this Court's statements that application of the rule is restricted to those cases where its remedial purpose is most effectively served. *Calandra*, 414 U.S. at 348.

Third, the Arizona Supreme Court described deterrence of police misconduct as "but one of the reasons that have been advanced" to support use of the exclusionary rule. (Pet. App. at 4a, n. 1.) Deterrence of police misconduct, however, is the primary purpose of the exclusionary rule. *Calandra*, 414 U.S. at 347. The Arizona Supreme Court did not specify what other purposes of the exclusionary rule were advanced by its use in this case, and this Court's decisions show that there are none. As noted above, curing the wrong suffered by the individual whose Fourth Amendment rights have been violated is not a purpose of the exclusionary rule. *Krull*, 480 U.S. at 347. Protecting the courts from reliance on untrustworthy evidence such as coerced statements may be a valid purpose of the exclusionary rule. *Tucker*, 417 U.S. at 448. The

evidence suppressed in this case, however, was relevant and material and in no way untrustworthy. Thus, the Arizona Supreme Court erred in suggesting that some other purpose of the exclusionary rule was served by suppressing the evidence in this case.

Fourth, the Arizona Supreme Court assumed that justice court personnel were responsible for the error that led to Evans' unlawful arrest. (Pet. App. at 5a.) It thus held, contrary to this Court's decision in *Leon*, that the exclusionary rule is designed to punish the errors of judges and magistrates. The fact that justice court employees and not the justice of the peace were responsible for the error is insufficient to distinguish this case from *Leon*. This Court stated in *Leon* that "there exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." 468 U.S. at 916. There is likewise no evidence suggesting that employees of judges and magistrates are any more inclined to engage in the type of conduct that would merit application of the exclusionary rule.

The Arizona Supreme Court sought to distinguish *Leon* by noting that the evidence seized in that case was obtained on the basis of a facially valid search warrant that was later invalidated, while noting that "no warrant at all was in existence at the time of [Evans'] arrest." (Pet. App. at 6a.) This factual distinction is unimportant, however. In both situations evidence was seized as a result of a Fourth Amendment violation. Neither violation is greater than the other and, in any event, application of the exclusionary rule turns not on the magnitude of the

violation but on whether excluding the evidence furthers the rule's purpose. The critical factor in *Leon* was that the police officer's conduct was objectively reasonable. This Court concluded that where an officer's conduct is objectively reasonable, excluding the evidence does not further the ends of the exclusionary rule in any appreciable way. 468 U.S. at 919-20.

In this case, the arresting officer's conduct was objectively reasonable. From the computer in his patrol car, the officer obtained information that there was a warrant for Evans' arrest. That information is the sort that an officer on the streets must necessarily rely on in performing his duties. The officer had no reason to know that the warrant was invalid: Evans did not protest and a later inquiry to his own police department's I-Bureau confirmed the warrant information. It was the justice court's responsibility to insure that the quashed warrant was removed from the computer system, and the evidence presented at the suppression hearing showed that the justice court did not meet its responsibility. Under these circumstances, the exclusionary rule should not be applied.

CONCLUSION

The judgment of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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No. 93-1660

In The

Supreme Court of the United States

October Term, 1994

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of Arizona

BRIEF OF RESPONDENT

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QUESTION PRESENTED

Where evidence has been seized incident to an arrest based upon a police computer record of an open warrant that had actually been quashed 17 days earlier, does the exclusionary rule require suppression of the evidence regardless of whether police personnel or court personnel were responsible for the quashed warrant's continued presence in the police computer record?

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OPINIONS BELOW

The opinion of the Supreme Court of Arizona is reported at 177 Ariz. 201, 866 P.2d 869 (1994). (Appendix to the Petition, hereinafter, Pet. App. at 1a.) The opinion of the Arizona Court of Appeals is reported at 172 Ariz. 314, 836 P.2d 1024 (Ct. App. 1992). (Pet. App. at 22a.)

JURISDICTION

Jurisdiction pursuant to 28 U.S.C. § 1257 is not properly invoked. No federal question was pressed or passed upon by the Arizona Court of Appeals or the Arizona Supreme Court. Arizona's good faith exception statute, A.R.S. § 13-3925, upon which the Arizona Court of Appeals based its decision, provides an independent non-federal ground. (Pet. App. at 35a-37a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

I. The arrest.

Isaac Evans turned the wrong way onto a one-way street. (Joint Appendix page 17, hereinafter, J.A. 17.) Unfortunately for Evans, this portion of the one-way street happened to be in front of the main police station in Phoenix, Arizona. (J.A. 16.) Not surprisingly, there were a number of officers in the area. Officer Sargent, who was parked in front of the police station doing his paperwork, activated his lights and made a U-turn to stop Evans' vehicle. (J.A. 16, 17.) Seventeen days earlier, Evans had appeared in justice court on a bench warrant for failure to appear on some traffic tickets. The justice of the peace quashed the warrant. (J.A. 29.) However, through no fault of Evans, the quashed warrant was not removed from the police computer; therefore, when the arresting officer did a "wants and warrants" check, the computer reported a "hit" which reflected an active misdemeanor warrant. (J.A. 19.) Phoenix Police Officer Sargent then took Evans to the police car where the officers searched him and handcuffed him. (J.A. 19.) As the officer attempted to place the cuffs on Evans, a hand-rolled cigarette fell to the ground. (J.A. 20.) In a subsequent search of Evans' car, the officers found a baggie of marijuana under the passenger seat. (J.A. 22.) Evans was taken into custody. Had the computer not indicated an active warrant for Evans' arrest, the officer would have written a citation for driving on a suspended license and sent Evans on his way. (J.A. 24.)

II. The suppression hearing.

The defense moved to suppress the evidence which had been seized following arrest pursuant to a nonexistent warrant. (J.A. 5.) The defense argued that the "good faith" exception to the exclusionary rule would not apply because it was police error, not judicial error, which caused the invalid arrest. (*Id.*)

At the suppression hearing, the State called not only the arresting officer, but also the chief clerk of the justice court which had quashed the warrant and a records clerk from the sheriff's office. The ordinary procedure when a warrant has been quashed in the justice court is that one of three clerks will call the warrant section of the sheriff's office advising that the warrant has been quashed and should be removed from the computer. (J.A. 29.) A notation in the file memorializes that the call was made. (J.A. 31.) There was no notation on Evans' file; however, the chief clerk was unable to say whether a call had not been made or whether, a call having been made, someone simply failed to make a notation. (J.A. 32.) It was not the chief clerk's responsibility to make the call and the State did not call as witnesses any of the three clerks who were responsible in order to ascertain whether or not any of them had made the call. (J.A. 32.) The records clerk from the sheriff's office, who worked in the OIC (Operations Information Center), testified that there was no notation on the sheriff's warrant recall list on the basis of which warrants are removed from the computer. (J.A. 41.) The clerk was unable to say whether a call had not been received from the justice court or whether a call was received but the clerk failed to make a notation on the recall list. (J.A. 43.)

The chief clerk of the justice court testified that when, on January 7th (two days after Evans was arrested), the justice court received notice that Evans had been arrested under their warrant, they immediately called the jail and faxed a copy of the release order. (J.A. 30.)

The trial court did not decide whether justice court personnel or sheriff's personnel were responsible for the failure to delete the warrant from the computer. The court held that regardless of whether the fault lay with the police department or a justice court clerk, "it is the State's fault." (J.A. 52.) The motion to suppress was granted and the State appealed.

III. Preservation of the question.

The motion to suppress filed by Mr. Evans' public defender in the trial court was based upon the Fourth Amendment. (J.A. 2.) However, except for the dissenting opinion in the Arizona Supreme Court, this was the last time the Fourth Amendment was even mentioned in this case until the State of Arizona raised it before this Court in the petition for certiorari. The State's response to the motion to suppress does not mention the Fourth Amendment. It does, however, argue that the officer acted in good faith pursuant to the Arizona good faith statute, A.R.S. § 13-3925. (J.A. 8-11.) During the entire suppression hearing, which is set forth in the Joint Appendix at pages 14 through 54, there is no mention of the Fourth Amendment. In making his ruling, the trial court judge merely stated: "Motion to Suppress is granted." (J.A. 53.)

The State's opening brief filed in the Arizona Court of Appeals says nothing about the Fourth Amendment.

(J.A. 55-61.) Nor is there anything about the Fourth Amendment in the answering brief filed by the defense. (J.A. 62-66.) Nor in the reply brief. (J.A. 67-70.) When Division One of the Arizona Court of Appeals reversed the trial court, it said not a word about the Fourth Amendment. (Pet. App. at 22a-40a.)

Evans filed a petition for discretionary review by the Arizona Supreme Court in which he made no mention of the Fourth Amendment. (J.A. 71-75.) In the State's response to Evans' petition for review, again, there is no mention of the Fourth Amendment. (J.A. 76-79.) The decision of the Arizona Supreme Court which reinstated the trial court's suppression order does not mention the Fourth Amendment. (Pet. App. at 1a-21a.) The dissent by a single member of the Arizona Supreme Court does mention the Fourth Amendment but this was the first time that it had been mentioned since the public defender filed the motion to suppress three years before.

SUMMARY OF ARGUMENT

The issue in this case is whether, in making an arrest, police officers may rely on their own computer's erroneous report when there is no warrant in existence.

Although propriety of exclusion under the Fourth Amendment was not pressed or passed upon in the Arizona courts, the result reached was fully in accord with Fourth Amendment jurisprudence.

Evans' arrest was completely without legal basis. There was no arrest warrant in existence nor was there probable cause or exigent circumstance.

The State of Arizona has conceded that, when Evans was arrested based merely upon the presence of a phantom warrant which existed only in the police computer, a Fourth Amendment violation occurred. Therefore, in the absence of some exception, suppression was proper. And no exception was justified.

There was no independent judicial determination by a judge or magistrate that Evans should be arrested and that, therefore, a warrant should issue. On the contrary, a justice of the peace had decided, based upon Evans' appearance in justice court seventeen days before, that the warrant previously issued by another judge should be quashed. Thus, *Leon*'s narrow exception to the exclusionary rule does not apply. *United States v. Leon*, 468 U.S. 897 (1984). The police here did not reasonably rely on a judicial error, they relied instead on a *police* computer error.

The deterrence purpose of the exclusionary rule is properly served when it provides an incentive to police to ensure the accuracy of their computer information systems. Exclusion of the evidence seized following Evans' illegal arrest also serves to preserve the judicial integrity of our courts and the public perception of courts and officers as law-abiding. The subjective reliance of the arresting officers based upon the computer report of a nonexistent warrant was not sufficient just as such reliance on a radio bulletin was insufficient in *Whiteley*. *Whiteley v. Warden*, 401 U.S. 560 (1971). Because there was

no warrant in existence to justify Evans' arrest, exclusion was the only proper decision under Fourth Amendment law.

Before they are given authority to arrest based upon computer information, law enforcement agencies, who, at the present time, are the only entities who can access criminal information systems, have the responsibility to ensure the accuracy of their computer systems and to provide fail-safe mechanisms to avoid illegal arrests. When law enforcement authorities do not, they cannot claim good faith reliance.

The Arizona Supreme Court should be affirmed.

ARGUMENTS

I. The jurisdiction of this Court is not properly invoked.

This Court lacks jurisdiction; the petition should be dismissed as improvidently granted.

A. The federal question was not pressed or passed upon in the state courts.

Certiorari jurisdiction over state court decisions derives from 28 U.S.C. § 1257. This section requires that a federal question be "set up or claimed" in the state court. Therefore, if the State of Arizona wished to bring a federal question here through certiorari, it had the obligation to preserve the question through Arizona appellate courts. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3

(1983). Because the State did not raise the Fourth Amendment issue at every level of the Arizona judicial system, it should not be permitted to do so here. *Illinois v. Gates*, 462 U.S. 213, 220 (1983). Nor did the State ever suggest (as amici have) that the federal exclusionary rule should be modified. (In fact, the State argued in its opening brief that the state's exclusionary rule, A.R.S. § 13-3925, governed.) (J.A. 61.) In *Gates*, the court said that modification of the exclusionary rule is not "so connected with" the substantive Fourth Amendment issue as to justify an argument for modification which has not been "pressed or passed upon below." *Gates*, 462 U.S. at 223. Finally, the Fourth Amendment issue was not "passed upon" by the Arizona Supreme Court which never mentioned it. The court decided that, in a free society, a person should not be subject to arrest because of a computer error caused by the government:

> It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. (Pet. App. at 10a.)

B. The matter was decided on independent non-federal grounds.

In the opening brief filed before the Arizona Court of Appeals, the State urged that it was entitled to prevail under Arizona's good faith statute, A.R.S. § 13-3925. (J.A. 61.) The Arizona Court of Appeals agreed holding that: "Under Arizona's good faith exception statute [A.R.S. § 13-3925], we find that neither the arresting officers nor

the Phoenix Police Department were negligent in arresting Evans or in searching his person." (Pet. App. 35a-37a.) The Arizona Supreme Court, in vacating the appellate court's decision and affirming the trial judge's decision to suppress, discussed the Arizona good faith statute, A.R.S. § 13-3925, and rejected the State's arguments:

> The arrest was not the result of "a reasonable judgmental error" concerning facts which might constitute probable cause. A.R.S. § 13-3925(C)(1). It was the result of negligent record keeping. * * * This is also not a cause involving a mere "technical violation." A.R.S. § 13-3925(C)(2). Defendant was arrested on the basis of a nonexistent warrant, not one that was "later invalidated due to a good faith mistake." (Pet. App. 7a, 8a.)

Regarding *Leon*, the Arizona Supreme Court responded to the dissent (not the State, which had never raised it) that *Leon* was not "helpful." *United States v. Leon*, 468 U.S. 897 (1984). (Pet. App. 6a.) Noting "the potential for Orwellian mischief" created by government carelessness in keeping its computers error free, the Arizona Supreme Court found a distinction without a difference in whether court clerks or police clerks are responsible.

C. Remand for State clarification.

If there remains a doubt as to whether a federal question was decided by the Arizona Supreme Court, this Court should remand for State clarification. That clarification could be as to the basis of the decision, federal or

state, and, if necessary, a factual finding, should this Court feel that it is necessary to decide whether sheriff or justice court employees were responsible.

Although the Fourth Amendment issue was not argued before or decided by the state court, the matter was correctly decided under Fourth Amendment jurisprudence as set forth below.

II. The Fourth Amendment and the purposes of the exclusionary rule require suppression of the evidence seized after an arrest based upon an erroneous police computer record indicating an active warrant.

A. The Fourth Amendment requires suppression of the evidence seized.

There was no legal basis for this arrest, warrant or probable cause. Evans was arrested solely because the police computer reported a nonexistent warrant. The officer would not have arrested Evans for driving on a suspended license; the sole basis for the arrest was the phantom warrant. The issue here is whether police may rely on their own computer's erroneous report where there is no warrant at all.

Petitioner and amici argue that the evidence seized following the arrest should not have been excluded because the arresting officer acted in good faith. Good faith is not enough. An arrest without a warrant to support the search incident to arrest must be made with probable cause. *See Henry v. United States*, 361 U.S. 98

(1959) and cases cited therein at 102. As stated by this Court in *Beck v. Ohio*, 379 U.S. 89, 97 (1964):

> If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be "secure in their persons, houses, papers, and effects" only in the discretion of the police.

See also Terry v. Ohio, 392 U.S. 1, 22 (1968).

The petitioner, the State of Arizona, has conceded a Fourth Amendment violation. (Petitioner's Brief at 10.) Therefore, in the absence of some exception, the Arizona Supreme Court properly suppressed in the exercise of its duty to give "force and effect" to the constitutional provision. *Weeks v. United States*, 232 U.S. 383, 392 (1914). *See also Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920) in which Justice Holmes wrote that to do otherwise would reduce "the Fourth Amendment to a form of words." 251 U.S. at 392. Justice Day wrote in *Weeks* that:

> The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land. 232 U.S. at 393.

In 1959, Justice Douglas wrote in *Henry v. United States* that:

> It is better, so the Fourth Amendment teaches, that the guilty go free than that citizens be subject to easy arrest. 361 U.S. 98, 104.

In short, there is "nothing new in the realization that the constitution sometimes insulates the criminality of a

few to protect the privacy of us all." *Arizona v. Hicks*, 480 U.S. 321, 329 (1987).

B. Suppression serves the purposes of the exclusionary rule.

In recent years, courts have focused on police deterrence as the primary purpose of the exclusionary rule. In order to deter police from unreasonable searches and seizures not based upon probable cause, the courts have required that a magistrate's scrutiny and determination be interposed before any intrusion is justified under the Fourth Amendment. Therefore, courts require the police to obtain the approval of a judge or magistrate. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The court in *Coolidge* quoted the "classic statement of policy underlying the warrant requirement" made by Justice Jackson writing in *Johnson v. United States*, 333 U.S. 10, 13, 14 (1948):

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. * * * When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent. *Coolidge*, 403 U.S. at 449.

Thus, in *Elkins*, 364 U.S. 206, 217, the court spoke of "removing the incentive to disregard the constitutional guarantee" and in *Terry* "limitations . . . to limit the quest itself." 392 U.S. 1, 29.[1]

When police officers reasonably rely upon a warrant which is later determined to have been issued pursuant to a judicial error (and the judge has not been misled by a police officer), the deterrence purpose of the exclusionary rule is not served and the evidence is admissible. *United States v. Leon*, 468 U.S. 897 (1984). The *Leon* exception is, however, a narrow one. Subjective good faith is not enough. And if the police authority in general is responsible (through negligence or deliberate conduct) for the misinformation on which the arresting officer relies, a Fourth Amendment violation has occurred and the evidence will be excluded. *Leon*, 468 U.S. at 922, 923.

The Arizona court's decision in *Evans* serves the deterrent purpose of the exclusionary rule in that it discourages the police authorities from negligent maintenance of their computer information systems. As Justice Zlaket of the Arizona Supreme Court wrote in the decision:

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[1] The need to protect constitutional rights from assault by overzealous policemen and police organizations is amply demonstrated by the amicus briefs in which it becomes clear that, not only have the police not learned the lessons of this Court's Fourth Amendment decisions, they continue to chafe against the Fourth Amendment's very existence with arguments that this Court's insistence on Fourth Amendment protections will "induce . . . police . . . disrespect for the law" and "penalize law enforcement." Brief for Washington Legal Foundation pages 21, 28.

> It is useful and proper to [invoke the exclusionary rule] where negligent record keeping (a purely clerical function) results in an unlawful arrest. Such an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system. (Pet. App. at 9a.)

Exclusion of the evidence seized following Evans' unlawful arrest also serves to preserve the judicial integrity of the courts, a secondary purpose of the exclusionary rule. Thus the court in *Wong Sun* emphasized the application of the exclusionary rule to protect the Fourth Amendment guarantees in two respects: deterring lawless conduct by federal officers, and "closing the doors of the federal courts to any use of evidence unconstitutionally obtained." *Wong Sun v. United States*, 371 U.S. 471, 486 (1963). *See also Brown v. Illinois*, 422 U.S. 590, 599 (1975). Decisions in this Court have repeatedly referred to "the imperative of judicial integrity." *Elkins v. United States*, 364 U.S. 206, 222 (1960); *Lee v. Florida*, 392 U.S. 378, 385, 386 (1968); *United States v. Peltier*, 422 U.S. 531, 537 (1975). In *Mapp v. Ohio*, in which the exclusionary rule was applied to the states, Justice Clark wrote:

> Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. 367 U.S. 643, 659 (1961).

The judicial integrity function of the exclusionary rule was again emphasized in *Terry v. Ohio* when Justice Warren wrote:

> Courts which sit under our constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by

> permitting unhindered governmental use of the fruits of such invasions. 392 U.S. 1, 13.

The judicial integrity of our courts would be tainted by admission of evidence seized after an unlawful arrest by police based upon misinformation in their own computer.

Exclusion of evidence in this case also serves the third purpose of the exclusionary rule: public perception of the courts. Use of illegally obtained evidence in the courtroom undermines public confidence in the judicial system.

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. Justice Brandeis dissenting in *Olmstead v. United States*, 277 U.S. 438, 485 (1928) as quoted by Justice Brennan in dissent in *United States v. Calandra*, 414 U.S. 338, 358 (1974).

In a nation increasingly concerned with crime, this third purpose, public perception and willingness to abide by the law, should become the first and primary focus because citizens who perceive that the courts and the authorities are not bound by the law will not feel bound by the law themselves.

Police officers and organizations should be directed to heed this Court's pronouncement in *Jeffers*:

> In so doing the Amendment does not place an unduly oppressive weight on law enforcement officers but merely interposes an orderly procedure under the aegis of judicial impartiality that is necessary to attain the beneficent purposes intended. *United States v. Jeffers*, 342 U.S. 48, 51 citing to *Johnson v. United States*.

C. The *Leon* exception to the exclusionary rule does not apply.

Leon does not apply. In *Leon*, officers obtained evidence on the basis of a facially valid search warrant issued by a neutral magistrate. The warrant was later held invalid. As the Arizona Supreme Court noted: "Such a situation is distinguishable from one like this, where no warrant at all was in existence at the time of the arrest." (Pet. App. at 6a.) In *Leon*, the arresting officer acted in good faith reliance on a defective warrant. In *Evans*, there was no warrant on which the arresting officer could put his reliance. There was only an erroneous report from a police computer solely in the control of the police. The Arizona Supreme Court correctly excluded the evidence taken after the unlawful arrest holding:

> It is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness. As automation increasingly invades modern life, the potential for Orwellian mischief grows. Under such circumstances, the exclusionary rule is a "cost" we cannot afford to be without. (Pet. App. at 10a.)

This case is not governed by *Leon*. As Justice O'Connor wrote in her dissent in *Illinois v. Krull*, 480 U.S. 340, 367 (1987): "*Leon* simply instructs courts that police officers may rely upon a facially valid search warrant." This Court's decisions in both *United States v. Leon* and its companion case, *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), concerned objectively reasonable reliance on a magistrate's warrant. Crucially, as was noted in *Sheppard*:

> An error of constitutional dimensions may have been committed with respect to the issuance of the warrant, but it was the judge, not the police officers, who made the critical mistake. *Sheppard*, 468 U.S. 990.

By contrast, in this case, the judge made no mistake. When Evans appeared, the judge quashed the warrant. It was the police computer which made "the critical mistake." Therefore, our appellate courts have held that where police are not acting on a warrant, Leon is not applicable. *See U.S. v. Scales*, 903 F.2d 765 (10th Cir. 1990); *U.S. v. Curzi*, 867 F.2d 36 (1st Cir. 1989); *U.S. v. Windsor*, 846 F.2d 1569 (9th Cir. 1988); *U.S. v. Warner*, 843 F.2d 401 (9th Cir. 1988). *See also* 1 W. LaFave, *Search and Seizure* § 1.3(g), at 78 (2d ed. 1987).

Not only was there no warrant, defective or otherwise, to justify Evans' arrest and search, it was not objectively reasonable for police to rely on the report of a warrant given this casual, haphazard procedure for reporting quashed warrants. Police authorities who have the power to drag a citizen off the street and into a jail cell have the responsibility to ensure that they have the authority to do so. A citizen's liberty interest should not

depend upon a phone call or a computer entry; the arresting authority has the responsibility to provide a fail-safe mechanism for ensuring that warrantless arrests are not made on the basis of stale computer information.[2] This erroneous information remained in the police computer after the warrant had been quashed through no fault of Evans. It must be remembered that police computer information systems cannot be accessed by any individual or organization other than a criminal justice agency.[3] This privilege is jealously guarded by police officers, sheriffs, and the F.B.I. It is only reasonable to expect that police authorities, having taken this "dog-in-the-manger" approach, should be responsible for the manger. It is the responsibility of the police authority to update their records; such failure should not overcome a defendant's constitutional right to be free from unreasonable search and seizure. There is a growing problem with police reliance on criminal files recorded and disseminated electronically. *See, e.g., State v. Peterson,* 830 P.2d 854 (App. 1991) and cases cited therein[4] at 857. The good faith

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[2] That there exists a factual question as to who was responsible for failure to delete the warrant from the computer illustrates the fatal shortcomings of the procedure established by the police.

[3] By contrast, the individual citizen can obtain a printout of his TRW credit report and can submit corrections if the report is in error.

[4] *United States v. Mackey,* 387 F. Supp. 1121 (D. Nev. 1975); *People v. Ramirez,* 34 Cal. 3d 541, 194 Cal. Rptr. 454, 668 P.2d 761 (1983); *Pesci v. State,* 420 So. 2d 380 (Fla. App. 1982); *People v. Joseph,* 128 Ill. App. 3d 668, 83 Ill. Dec. 883, 470 N.E.2d 1303 (1984); *People v. Lawson,* 119 Ill. App. 3d 42, 74 Ill. Dec. 668, 456 N.E.2d 170 (1983); *People v. Decuir,* 84 Ill. App. 3d 531, 39 Ill. Dec.

exception of *Leon* is not applicable where a citizen is deprived of his liberty without any legal basis because of stale information in police computer records. *See People v. Joseph,* 470 N.E.2d 1303 (1984). There is simply no basis to extend the *Leon* good faith exception based upon a facially valid warrant issued by a magistrate to "facially valid" computer information issued by the police themselves. To do so would violate *Leon*'s insistence upon objective as opposed to subjective good faith.

D. Exclusion is mandated by this Court's decisions in *Leon, Whiteley,* and *Hensley.*

Exclusion is the only proper resolution under this Court's decisions in *Leon, Whiteley, and Hensley.* In *Whiteley,* 401 U.S. 560 (1971), this Court held that a police bulletin did not provide probable cause for Whiteley's warrantless arrest. The sheriff's conclusory statements in the complaint upon which a warrant was issued were insufficient to support the independent judgment of a disinterested magistrate. Police officers arrested Whiteley based upon a radio bulletin calling for Whiteley's arrest. Just as the State argues in this case, in *Whiteley,* the state argued police reliance on the radio bulletin. The subjective reliance of the arresting officers was not sufficient. The court said:

912, 405 N.E.2d 891 (1980); *People v. Jennings,* 54 N.Y. 2d 518, 446 N.Y.S.2d 229, 430 N.E.2d 1282 (1981); *People v. Watson,* 100 App. Div. 2d 452, 474 N.Y.S.2d 978 (1984); *People v. Lent,* 92 App. Div. 2d 941, 460 N.Y.S.2d 369 (1983); *State v. Trenidad,* 23 Wash. App. 418, 595 P.2d 957 (1979).

> Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

The decision to exclude in *Whiteley* turned, therefore, on the fact that the *sheriff*, not the magistrate, was at fault. Here, the police computer was at fault. In 1984, the *Leon* court cited to *Whiteley* to make clear that there must be objective reasonableness not only on the part of officers who eventually execute a warrant but also on the part of officers who provide information for the probable cause determination. *United States v. Leon*, 468 U.S. at 923. Citing to *Franks v. Delaware*, 438 U.S. 154 (1978), the *Leon* court held that suppression is an appropriate remedy if the magistrate or judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. 468 U.S. at 923. Here, the officer's warrantless arrest of Evans was not objectively reasonable based as it was on a police computer information base recklessly or negligently maintained. It must be remembered that only a police authority could remove the warrant from the police computer once it had been entered. Justice court personnel could not access or change the police computer. In order to protect their

jealously guarded exclusive right to access their computer, the police authorities chose a system whereby justice court personnel would call the sheriff and the sheriff would access and correct the computer. It makes no difference whether the justice court personnel or the sheriff's personnel were at fault in deleting the warrant from the computer. The justice of the peace made no error; he quashed the warrant. The issue here is the accuracy of information in a police computer which can only be accessed by the police.

In 1985, this Court decided *United States v. Hensley*, 469 U.S. 221. In *Hensley*, police made an investigatory stop in reliance upon another police department's wanted flyer. This Court held that because the flyer was based upon articulable facts supporting a reasonable suspicion that the wanted person committed the offense, reliance on the flyer justified a stop. This Court was very clear, however, that if the flyer had been issued in the absence of reasonable suspicion, then a stop in objective reliance upon it violates the Fourth Amendment. 469 U.S. at 230. The court in *Hensley* held that *Whiteley* supports the proposition that admissibility turns on whether the officers who *issued* the flyer possess probable cause to make the arrest.[5] *Hensley* also suggests that the officers making the stop were not justified in a lengthy detention or arrest based on less than probable cause. 469 U.S. at 235. The *Hensley* court also cited to *Whiteley* in making clear that

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[5] *Hensley* demonstrates the difference between a police officer's good faith defense to civil suit where the flyer was issued without probable cause and violation of the Fourth Amendment requiring suppression in a criminal case.

officers should, of course, arrest when a bulletin or the radio so instructs them but that this arrest cannot be insulated from a challenge to the originating or instigating officer. 431 U.S. at 230. Amici's arguments that the officers were entitled to arrest are, therefore, beside the point.

Exclusion was the only proper decision where no warrant was extant to justify Evans' arrest.

III. The Fourth Amendment's absolute prohibition against unreasonable searches and seizures demands a remedy which focuses on avoiding its violation.

In deciding whether to exclude evidence gathered in violation of constitutional mandates, earlier courts have discussed the Fourth Amendment's absolute proscription against unreasonable searches along with the Fifth Amendment's proscription against the use in court of compelled statements. In *Boyd v. United States*, 116 U.S. 616, 630 (1886), the court described the Fourth and Fifth Amendments as running "almost into each other." And in *Mapp*, in deciding to exclude, the court described "the close interrelationship between the Fourth and Fifth Amendments as they apply to this problem." 367 U.S. at 662. The court in *Mapp* at 647 noted *Boyd*'s pronouncement that "constitutional provisions for the security of person and property should be liberally construed" and that, in holding as it did, the *Boyd* court "gave life to Madison's prediction that the 'independent tribunals of

justice . . . will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.' 1 Annals of Cong. 439 (1789)." *Mapp* 367 U.S. at 647.

By the time of this Court's decision in *United States v. Verdugo-Urquidez*, 110 S. Ct. 1056 (1990), the court was noting that the Fourth Amendment operates differently from the Fifth in that it prohibits "unreasonable searches and seizures" whether or not used in court. The violation of the Fourth Amendment is "fully accomplished at the time of the governmental intrusion" whereas the violation of the Fifth Amendment takes place not when the statement is compelled but only later at trial.

Perhaps it is time to consider, then, that the framers of our constitution meant to give more protection from the police in the Fourth Amendment than in the Fifth. Our courts have held that police are free to question a citizen but, if they violate his right to remain silent, the statement given cannot, under the Fifth Amendment be used in court. It is for this reason that the *Miranda* warnings were fashioned in order to prevent a compelled statement (or violation of the Fifth Amendment) from happening. It may now be time for this Court to approach the Fourth Amendment as directly as it has the Fifth Amendment in *Miranda*, 384 U.S. 436 (1966). Exclusion of unconstitutionally seized evidence is, after all, merely a judicial remedy (*see United States v. Calandra*, 414 U.S. 338, 620 (1974)), a necessary band-aid which does not prevent the injury. In order to prevent an unreasonable search and

seizure from happening, this Court could fashion a preventive procedure just as it did in *Miranda*.[6] In this day and age of computers and mobile fax machines, the Fourth Amendment asks no more than this Court has provided in *Miranda*. If computers are to be utilized, then courts should require police to have a fax of a warrant if they are to have the power to arrest under its authority. Had the police who arrested Evans checked with the justice court and asked for a fax of the warrant, they would have learned that there was no longer a warrant in existence.[7]

The framers of our constitution envisioned an official document called a warrant to give police the authority from the court to arrest. This authority is too powerful

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[6] Any encounter with today's policeman is just that. The friendly Irish cop is gone from the beat replaced by the new centurion with an "us" (cops) and "them" (everybody else) attitude. Violations of constitutional rights are the norm with these new troopers; however, because there now exists only the exclusionary rule for redress, courts see only those violations involving "bad guys" in criminal matters.

[7] As an alternative procedure, entries into police information systems should be made by the clerks of the issuing court and the court clerks should be the ones to delete the warrant immediately at the time the magistrate quashes it. If police authorities are not to be held responsible for their own computers, then justice courts must have direct access to correct warrant information. An officer who checks back with his same computer, as did the officer in this case, does not ascertain whether the warrant is "valid," he merely confirms what the officer already knows: that the computer reflects (however erroneously) that a warrant is extant. The only way to check whether a warrant is truly valid is to check with the issuing judge or court.

and the freedom it concerns too precious to be entrusted to a computer byte. We require police to have a search warrant with them to give authority to search a home. A man's liberty deserves no less.

CONCLUSION

The decision of the Arizona Supreme Court should be affirmed.

RESPECTFULLY SUBMITTED,

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No. 93-1660

In The

Supreme Court of the United States

October Term, 1994

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of Arizona

PETITIONER'S REPLY BRIEF

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CONSTITUTIONAL PROVISIONS

ARGUMENT

A. This Court Has Jurisdiction Over This Case

Evans contends that this Court lacks jurisdiction and should dismiss the petition as improvidently granted. He claims that the Arizona Supreme Court's opinion was not based on the Fourth Amendment, but instead rested on independent state grounds. He also suggests that if there is doubt regarding whether the Arizona Supreme Court decided a federal question, this Court should remand for clarification.

The respondent in *Michigan v. Long*, 463 U.S. 1032 (1983), made the same argument about the Michigan Supreme Court's decision on a search and seizure issue, noting that Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment. This Court acknowledged that it will not review a state court decision which indicates clearly and expressly that it is alternatively based on separate, adequate and independent state grounds. 463 U.S. at 1041. This Court, however, rejected the notion that, in the absence of such a plain statement of independent state grounds, it should remand to the state court for clarification. *Id.* at 1039-40. Instead, this Court held it will "assume there are no such grounds when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law." *Id.* at 1042 (footnote omitted). Since, aside from two citations to the State Constitution, the Michigan Supreme Court

relied exclusively on its understanding of federal case law, this Court concluded that it had jurisdiction.

This Court likewise has jurisdiction in this case. First, the Arizona Supreme Court's decision contains no plain statement that it relied upon an adequate and independent state ground. Second, in reaching its decision the Arizona Supreme Court never cited the Arizona Constitution. Third, unlike the respondent in *Michigan v. Long*, Evans cannot even assert that the Arizona Supreme Court provides greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment. The Arizona Supreme Court has held that the exclusionary rule under state law is no broader than the federal rule. *State v. Bolt*, 689 P.2d 519, 528 (Ariz. 1984). Fourth, the Arizona Supreme Court relied almost exclusively on decisions by this Court, particularly when discussing the purposes to be served by the exclusionary rule. (Pet. App. at 4a, n. 1.) Further, the legal journals and treatises, as well as the state court decisions the Arizona Supreme Court cited, focus on the Fourth Amendment and decisions from this Court, primarily *United States v. Leon*, 468 U.S. 897 (1984). Under these circumstances, it is evident that the Arizona Supreme Court rested its decision primarily on federal law, and therefore respondent's jurisdictional argument is meritless.

B. The Exclusionary Rule Should Not Be Applied in This Case

Evans' argument regarding application of the exclusionary rule proceeds along the same line as that adopted

by the majority of the Arizona Supreme Court. He focuses on the fact that a Fourth Amendment violation occurred here, and asserts that the violation requires application of the exclusionary rule "in the absence of some exception." (Resp. Brief at 11.)

Evans' approach ignores the analytical framework this Court has consistently followed since *United States v. Calandra*, 414 U.S. 338 (1974). Contrary to Evans' assertions, whether to apply the exclusionary rule is an issue wholly separate from the issue whether the Fourth Amendment has been violated. *United States v. Leon*, 468 U.S. 897, 906 (1984). This Court has made it clear that, even though the Fourth Amendment has been violated, the exclusionary rule will only be applied where its remedial purpose will be most effectively served.

Evans next suggests that the "good faith" exception to the exclusionary rule announced in *Leon* is a narrow one, limited to situations where a police officer relies on a warrant issued by a magistrate.[1] While the holding in

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[1] Respondent, like the majority of the Arizona Supreme Court, attempts to distinguish *Leon* on the grounds that the evidence seized in that case was obtained pursuant to a facially valid warrant that was later invalidated. Here, evidence was seized pursuant to a bench warrant that had been issued by a magistrate but later quashed. This distinction is not material. What is material is that in both cases the officers relied on information that a reasonable officer would have believed legally authorized him to conduct a search or make an arrest. As Justice Martone of the Arizona Supreme Court stated in his dissent:

> When the computer shows an outstanding arrest warrant, the officer is expected to make an arrest. He is in the same position as one who holds an arrest warrant

Leon is limited to warrant-authorized searches, the analytical framework applied by this Court in reaching that holding is not. Three years after *Leon*, this Court extended the "good faith" exception beyond warrant-authorized searches and applied it to searches authorized by a statute. *Illinois v. Krull*, 480 U.S. 340 (1987). Thus, this Court has already rejected Evans' attempt to limit *Leon*.

Amicus National Association of Criminal Defense Lawyers attempts to account for *Krull* by suggesting that the "good faith" exception is not limited to warrant-authorized searches, but is limited to situations involving "other-directed" searches. (NACDL Brief at 8-12.) Petitioner rejects this premise, but notes that the officer's arrest of respondent was "other-directed": he acted on the basis of information that had been provided to the Sheriff's Office by the clerk of the justice court, and the failure to update that information was due to an error by the clerk.

In any event, the decisions in *Leon* and *Krull* are not limited to a certain type of Fourth Amendment violation. In a case that preceded both *Leon* and *Krull*, this Court held that the exclusionary rule would not be applied in federal habeas corpus proceedings. *Stone v. Powell*, 428 U.S. 465 (1976). The holding in *Stone* was not limited by

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> in his hand. It makes no difference whether, after issuance, a warrant is quashed or otherwise invalid. In both cases the warrant is without effect, yet it appears to the officer to be facially valid. In either case, *Leon* controls.

(Pet. App. at 16a.) Thus, even if respondent were correct that *Leon* is limited to warrant-authorized searches, his argument would still lack merit.

the type of Fourth Amendment violation that may have occurred. The holding instead was grounded on the same analytical framework applied in *Leon* and *Krull*: the primary purpose of the exclusionary rule (deterrence of future unlawful police misconduct) would not be served by its application under the facts of the case.

Evans asserts that *Whiteley v. Warden*, 401 U.S. 560 (1971), and *United States v. Hensley*, 469 U.S. 221 (1985), require suppression in this case. In those cases, this Court held that the Fourth Amendment is violated when police arrest a suspect based on a report that there is a warrant outstanding, but the warrant is later held invalid (*Whiteley*), or when the police detain a suspect within the meaning of *Terry v. Ohio*, 392 U.S. 1 (1968), based on a police flyer that lacks reasonable suspicion (*Hensley*). Neither decision requires suppression in this case. *Whiteley* predates this Court's decisions in *Calandra* and *Leon*.[2] Although the *Hensley* decision came a year after *Leon*, *Hensley* did not cite (let alone reject) *Leon*. In fact, this Court addressed no exclusionary rule issue in *Hensley* because it found no Fourth Amendment violation. In addition, applying the *Leon* exception to cases like this one is not inconsistent with *Whitely* and *Hensley*. Because those cases hold that the police cannot rely on erroneously-issued warrants or flyers to seize a suspect, the police must release anyone so held once they learn that the warrant or flyer should not have issued. Applying

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[2] A purely factual distinction exists in that the warrant in *Leon* was supported by more than a "bare bones" affidavit, 468 U.S. at 926, while the warrant in *Whiteley* was not, 401 U.S. at 565.

Leon to cases like this one simply means that if the officers reasonably believed that the warrant or flyer was valid, evidence that the officers acquired during the time that the suspect was detained should not be suppressed. For that reason, there is no inconsistency between this Court's decisions in *Whiteley* and *Hensley*, on the one hand, and its decision in *Leon* on the other.

Evans claims that the *Leon* exception should not apply here because "the police computer was at fault." (Resp. Brief at 20.) Petitioner agrees that this Court has authority to decide who was at fault in this case. The record, however, does not support the conclusion that the Sheriff's Office was at fault. The justice court clerk's office did not properly record the quashing of the warrant in its own files (J.A. at 29, 32), let alone properly transmit that information to the Sheriff's Office. Also, in three other cases where warrants had been quashed on the same day as Evans', the justice court clerk's office did not properly record the quashing of the warrants. (*Id.* at 37.) Even if, as Evans suggests, the Sheriff's Office had some Fourth Amendment obligation to allow the justice court clerk's office access to the Sheriff's Office computer system, this record does not support faulting the Sheriff's Office for the mistake that occurred here.

Finally, Evans asks this Court to adopt procedures requiring police "to have a fax of a warrant if they are to have the power to arrest under its authority" (Resp. Brief at 24), or to allow court clerks to have "direct access" to law enforcement information systems "to correct warrant information." (*Id.* at 24, n. 7.) Evans did not raise this claim in the courts below and should not be allowed to do so in this Court for the first time. *See, e.g., United States*

v. Alvarez-Sanchez, 114 S.Ct. 1599, 1605 n. 5 (1994). Further, even if this Court were to hold that the Fourth Amendment imposed such a requirement, no such requirement was in effect when Evans was arrested, and thus the arresting officers cannot be said to have acted unreasonably for failing to comply with a rule that did not yet exist. In any event, requiring an officer to have a signed warrant or a copy of it in his hands before he can arrest a suspect would be inconsistent with the "collective knowledge" doctrine adopted in *Hensley*, 469 U.S. at 231, *Illinois v. Andreas*, 463 U.S. 765, 771 n. 5 (1983), and *Whiteley*, 401 U.S. at 568. Under that doctrine, the facts known to one officer cooperating in an investigation will be deemed to be known by all members of the team. That doctrine applies in this context: just as a warrant in the possession of one officer would be deemed to be in the possession of the entire team, so, too, should a warrant that is listed in a law enforcement computer be deemed to be in the possession of all officers. An officer therefore should be free to act on the basis of a facially valid report from a law enforcement computer that there is a warrant outstanding for a suspect's arrest.

Petitioner agrees with Evans that mere subjective good faith of the officers is not enough to justify application of *Leon*. Their conduct must also be objectively reasonable. The officers who arrested Evans were plainly acting in subjective good faith, and their conduct was just as plainly objectively reasonable because a reasonable officer in their situation would have believed that the report of the outstanding warrant was valid. Therefore,

Leon is applicable and the evidence should not be suppressed.

CONCLUSION

The judgment of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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OCTOBER TERM, 1981

STATE OF ARIZONA, PETITIONER

v.

ISAAC EVANS

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether, if police officers arrest an individual after receiving from court personnel incorrect information concerning a previously issued arrest warrant, evidence seized incident to the arrest should be suppressed.

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In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 93-1660

STATE OF ARIZONA, PETITIONER

v.

ISAAC EVANS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

The United States relies on various systems to maintain information on criminal investigations. For example, the National Crime Information Center (NCIC) computer system provides data on outstanding arrest warrants to agents in the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Secret Service, and the Bureau of Alcohol, Tobacco and Firearms. State and local law enforcement agencies make use of the NCIC system, but many jurisdictions also maintain their own systems. In this case, the State of Arizona presents the question whether the exclusionary rule applies where police officers make an arrest in reliance on an inaccurate entry of an arrest

warrant contained in a state information system. Because similar issues could arise with respect to federal information systems, the United States has a significant interest in this case.

STATUTORY PROVISIONS AND RULE INVOLVED

Pertinent provisions of the Arizona Revised Statutes Annotated and the Arizona Rules of Criminal Procedure are set out in the Appendix to this brief.

STATEMENT

On January 5, 1991, Phoenix police officer Bryan Sargent observed respondent Isaac Evans driving the wrong way down a one-way street in front of the main police station. Officer Sargent stopped respondent and asked to see his driver's license. Respondent replied that his license had been suspended. Officer Sargent then obtained respondent's name and entered it into a data terminal, located in the patrol car, that provided access to the police department's computerized information system. See J.A. 15-18.

Officer Sargent's computer query confirmed that respondent's license had been suspended. The check also revealed an outstanding misdemeanor warrant for respondent's arrest, but it did not identify why his arrest was sought. J.A. 19. Officer Sargent returned to respondent and advised him that he was under arrest. J.A. 19.[1] While he was being handcuffed, respondent

[1] The officer testified that he had arrested respondent "for the warrant," J.A. 19, but he later stated that he had also arrested respondent on account of the suspended license. J.A. 23. The officer noted, however, that he would "probably not" have made the arrest in the absence of the outstanding warrant. J.A. 23-24. Arizona law authorizes peace officers to arrest a motorist for driving with a suspended license, Ariz. Rev. Stat. Ann. § 13-3883(A)(2) (1989 & Supp. 1993), § 28-473 (1989 & Supp. 1993), but the officer testified that he would normally issue a citation for that offense. J.A. 23, 24-25. See also Ariz. Rev. Stat. Ann. § 13-3903(A) (1989) (allowing officers to release an arrested person from custody "in lieu of taking such person to the police station" in the case of misdemeanors and petty offenses).

dropped a hand-rolled cigarette he had been carrying, which Officer Sargent's partner retrieved. The officers noticed that the cigarette smelled like marijuana. They searched respondent's car and found a bag of marijuana under the passenger seat and rolling papers and marijuana residue in the purse of a passenger. J.A. 19-22. After the arrest, Officer Sargent contacted his police station and received confirmation that the arrest warrant remained valid. J.A. 22.

The State charged respondent with possession of marijuana, and respondent filed a motion to suppress the evidence obtained through the arrest and search. The chief clerk of the justice court that had issued the arrest warrant testified at the suppression hearing concerning the events surrounding its issuance. J.A. 25-37. She stated that a justice of the peace had originally ordered issuance of a warrant for respondent's arrest on December 13, 1990, after respondent failed to appear to answer for several traffic violations. J.A. 28-29. On December 19, respondent appeared before a *pro tem* justice of the peace who entered a notation in the file stating "Defendant appeared; quash warrant and release O.R.; set for pretrial." J.A. 29. The justice court's records contained no indication, however, that any of the justice court's three clerks, who have that responsibility, had ever notified the police department of the *pro tem* justice's action. J.A. 29-30. When the police notified the justice court that they had arrested respondent, the

court learned of the error and instructed the police to release him. J.A. 30.[2]

Respondent argued that the State had unlawfully arrested him on the basis of a quashed warrant, which invalidated the arrest and the search incident to it. See J.A. 46-48. The State contended that the arrest was valid because it was objectively reasonable regardless of the status of the warrant and that the good-faith exception to the exclusionary rule should apply because the police had made the arrest and conducted the incidental search in the good-faith belief that respondent was subject to an outstanding warrant. See J.A. 48-51. Ruling from the bench, the trial court granted the motion to suppress, holding that a state appellate decision involving erroneous information on a law-enforcement computer information system, *State* v. *Greene*, 783 P.2d 829 (Ariz. Ct. App. 1989), required suppression. J.A. 50-53. The trial court court made no express factual findings regarding the source of the error, concluding that the

[2] The court clerk suggested that the error in this case occurred because the *pro tem* justice did not enter the notation to quash the warrant in the customary manner, the court clerks overlooked the justice's notation, and they consequently failed to notify the police department of the justice's action. J.A. 35. She stated that an error of this sort occurs "maybe on[c]e every three or four years." J.A. 37. The testimony of a police records clerk responsible for communications with the justice court supported the court clerk's explanation of the error. The police clerk testified that the police department keeps records of calls from the justice court concerning warrants and that those records contained no indication that the court had contacted the police to recall the warrant for respondent's arrest. J.A. 38-46.

result would be the same whether the error was caused by the justice court or the police. J.A. 52-53.[3]

A divided state court of appeals reversed the trial court's ruling. Pet. App. 22a-40a. The appellate court distinguished *Greene* on the ground that the decision there had addressed police negligence in maintaining police computer files; here, by contrast, "there is no evidence that the arresting officers or the Phoenix Police Department were negligent in any way." *Id.* at 30a-31a. The court of appeals also noted that the court below "appeared to overgeneralize the rationale behind the exclusionary rule," which is "to deter unlawful *police conduct*." *Id.* at 32a (citing *United States* v. *Leon*, 468 U.S. 897, 916 (1984), and *Michigan* v. *Tucker*, 417 U.S. 433, 446 (1974)). The appellate court found the officers' actions in this case to be objectively reasonable, given that "the arresting officers had absolutely no way of knowing that [respondent's] arrest warrant had been quashed." Pet. App. 34a. It also found that exclusion of the seized evidence would not serve to deter future such errors by judicial personnel. *Id.* at 33a-34a.

The Arizona Supreme Court reversed the decision of the court of appeals. Pet. App. 1a-21a. The state supreme court first stated that it was "unable to follow the lead of the court of appeals in dismissing conflicting inferences raised by evidence on the issue whether fault rested with the justice court, the police, or both." *Id.* at 4a-5a. But even if court personnel *had* been solely at

[3] The State argued that "[t]his doesn't fall within the ambit of *Greene*, because it wasn't the police department's fault. And we have proved that." J.A. 52. The court responded, "I understand. But it is the State's fault. I can't find a distinction between State action, whether it happens to be the police department or not." J.A. 52.

fault, the state supreme court held, the exclusionary rule should apply:

> We cannot support the distinction drawn by the court of appeals and the dissent between clerical errors committed by law enforcement personnel and similar mistakes by court employees. We are concerned here with the performance of purely ministerial functions, not the exercise of judicial discretion. While it may be inappropriate to invoke the exclusionary rule where a magistrate has issued a facially valid warrant (a discretionary judicial function) based on an erroneous evaluation of the facts, the law, or both, *Leon*, 468 U.S. 897, 104 S. Ct. 3430 (1984), it is useful and proper to do so where negligent record keeping (a purely clerical function) results in an unlawful arrest. Such an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system.

Id. at 8a-9a. One justice dissented, stating that "[t]his case falls squarely within the rule of *Leon*." *Id.* at 15a.

SUMMARY OF ARGUMENT

The State of Arizona challenges the Arizona Supreme Court's determination that the exclusionary rule requires suppression of evidence seized incident to an unlawful arrest regardless of whether court personnel or police personnel were responsible for the clerical error that led to the arrest. We submit that the difference is significant in determining whether the exclusionary rule should apply.

The primary purpose of excluding evidence seized in violation of the Fourth Amendment is to deter future police misconduct. *Illinois* v. *Krull*, 480 U.S. 340, 347 (1987); *United States* v. *Leon*, 468 U.S. 897, 916 (1984). If

an arrest is invalid solely because court personnel made a clerical error in relating information, then the suppression of evidence seized incident to that arrest would not fulfill the rule's primary objective. Court clerks are distinct from police officers. They are not "adjuncts to the law enforcement team" who would "have [a] stake in the outcome of particular criminal prosecutions" and who would be deterred from future errors by the suppression of the evidence in this case. *Leon*, 468 U.S. at 917. Hence, if court personnel alone are responsible for the informational error leading to an invalid arrest, the exclusionary rule should not require suppression of relevant evidence seized incident to that arrest.

If the police department is responsible for the erroneous transmission of information that results in an invalid arrest, then the exclusionary rule could conceivably have a deterrent effect. The application of the rule in that context, however, necessarily depends on the type of error and the circumstances in which it arises. This Court has delineated the reach of the exclusionary rule in particular factual situations by balancing the public interest in deterring police misconduct against the costs to the judicial system of suppressing relevant evidence. See *Leon*, 468 U.S. at 906-913. The reasonableness of the police conduct is an important factor in the analysis. The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 918-919.

The Arizona Supreme Court was mistaken in concluding that the exclusionary rule should apply in this case irrespective of whether court personnel or the police were responsible for the erroneous warrant information that led to respondent's arrest. The decision

should therefore be reversed. Because the trial court did not make a specific factual finding whether court personnel or police personnel were responsible for the erroneous information, this Court should remand the case for determination of the facts necessary to resolve respondent's suppression motion.

ARGUMENT

THE ARIZONA SUPREME COURT ERRED IN CONCLUDING THAT THE EXCLUSIONARY RULE APPLIES IN THIS CASE REGARDLESS OF WHETHER COURT PERSONNEL OR POLICE PERSONNEL WERE RESPONSIBLE FOR PROVIDING THE ARRESTING OFFICERS WITH INACCURATE WARRANT INFORMATION

The State of Arizona challenges the Arizona Supreme Court's determination that the exclusionary rule requires suppression of evidence seized incident to an unlawful arrest irrespective of whether court personnel or police personnel were responsible for the clerical error that led to the arrest. We submit that the difference is significant in determining whether the exclusionary rule should apply. The exclusionary rule should not be applied if court personnel are responsible for the outdated or incorrect warrant information. The rule may be applicable, however, if the police are responsible for providing the erroneous information, depending on the type of error and the circumstances in which it arises. The Arizona Supreme Court's decision should accordingly be reversed and the case should be remanded for factual findings respecting the source of the error in this case.[4]

A. If the Courts Are Responsible For The Inaccurate Warrant Information, Then The Exclusionary Rule Should Not Apply

This Court has repeatedly emphasized that the exclusionary rule is "neither intended nor able to 'cure the invasion of the defendant's rights which he has already suffered'"; rather, it "operates as a 'judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.'" *Illinois* v. *Krull*, 480 U.S. 340, 347 (1987); *United States* v. *Leon*, 468 U.S. 897, 906 (1984); see also *United States* v. *Calandra*, 414 U.S. 338, 347 (1974). Accordingly, the exclusionary rule does not result in suppression of evidence whenever the Fourth Amendment is violated. "As with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced." *Krull*, 480 U.S. at 347; see also *Leon*, 468 U.S. at 908; *Calandra*, 414 U.S. at 348.

In this case, the Arizona Supreme Court held that even if the justice court clerks were entirely at fault for failing to provide updated warrant information, the exclusionary rule should nevertheless apply. The court reasoned that application of the exclusionary rule would be "useful and proper * * * where negligent record keeping (a purely clerical function) result[ed] in an

---

[4] Arizona's petition for a writ of certiorari does not directly contest whether respondent's arrest and the subsequent search actually violated the Fourth Amendment. Because Arizona has not squarely raised that issue, we express no opinion as to whether the Fourth Amendment was actually transgressed in this case. Cf. *United States* v. *Leon*, 468 U.S. 897, 905 (1984).

unlawful arrest," because "[s]uch an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system." Pet. App. 9a.

The Arizona court's expansive application of the exclusionary rule is inconsistent with this Court's decisions, which make clear that the exclusionary rule's deterrence rationale does not apply with equal force to all actors in the criminal justice system. See, *e.g.*, *Krull*, 480 U.S. 347-355; *Leon*, 468 U.S. at 916-917. The Court specifically held in *Leon* that the exclusionary rule is not an effective mechanism for deterring judges and magistrates from making errors, explaining that "[t]o the extent that proponents of exclusion rely on its behavioral effects on judges and magistrates in these areas, their reliance is misplaced." 468 U.S. at 916. The three controlling considerations that this Court identified in that case—and subsequently applied in *Krull*—apply in this case as well.

First, court clerks are not in any sense police officers and therefore fall outside the exclusionary rule's traditional focus on police officer misconduct. *Krull*, 480 U.S. at 348; *Leon*, 468 U.S. at 916. Second, respondent has brought forward no evidence suggesting that court clerks "are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Krull*, 480 U.S. at 348, quoting *Leon*, 468 U.S. at 916. Third, like legislators and judges, court clerks are not "adjuncts to the law enforcement team." *Krull*, 480 U.S. at 350-351. They do not "have [a] stake in the outcome of particular criminal prosecutions. The threat of exclusion thus cannot be expected significantly to deter them." *Leon*, 468 U.S. at 917. See generally *Shadwick* v. *City of Tampa*, 407 U.S. 345, 350-352 (1972)

(noting that a city's court clerks were "subject to the supervision of the municipal court judge," they were "neutral and detached" from law enforcement activities, and they had no "partiality, or affiliation * * * with prosecutors or police").[5]

The Arizona Supreme Court cited nothing to support its suggestion that the exclusionary rule should apply in this case because the error here was "purely clerical." Pet. App. 9a. This Court's decisions reveal that the Arizona court's distinction between "discretionary judicial function[s]" and "clerical function[s]" (*ibid.*) is not sound. This Court has specifically held that the exclusion of probative evidence is inappropriate in those cases where the error is clerical in nature. See *Massachusetts* v. *Sheppard*, 468 U.S. 981, 990-991 (1984). As the Court stated in *Sheppard*, "Suppressing evidence because the judge failed to make all the necessary clerical corrections despite his assurances that such changes would be made will not serve the deterrent function that the exclusionary rule was designed to achieve." *Ibid.*

The Court observed in *Leon* that "the exclusionary sanction is not necessary meaningfully to inform judicial officers of their errors," and withholding that sanction will not "in any way reduce [their] professional incentives to comply with the Fourth Amendment [or] encourage them to repeat their mistakes." 468 U.S. at 917. The record in this case indicates that those observations are equally true with respect to court clerks. Immediately upon learning of respondent's arrest, the clerks in this case took prompt action to

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[5] Indeed, this Court recognized in *Shadwick* that States may authorize court clerks to act as "judicial officers" with the power to issue and quash arrest warrants. 407 U.S. at 352-354.

correct their error and to prevent similar mistakes in other cases. J.A. 37. The further action of suppression would accomplish nothing more.

B. If the Police Are Responsible For The Inaccurate Warrant Information, Then The Application Of The Exclusionary Rule Will Depend On The Facts Of The Particular Case

This Court's decisions support a categorical exception to the exclusionary rule for court clerical errors. They do not dictate, however, a similar categorical approach with respect to police clerical errors. As this Court has explained, "the exclusionary rule is designed to deter police misconduct." *Leon*, 468 U.S. at 916. If the police department wrongfully transmits erroneous information to the arresting officers that results in an invalid arrest and search, then excluding the evidence seized could conceivably deter future misconduct. But the application of the exclusionary rule in that context depends on the type of error and the circumstances in which it arises.

This Court has determined the reach of the exclusionary rule by balancing the public interest in deterring police misconduct against the costs to the judicial system of suppressing relevant evidence. See *Leon*, 468 U.S. at 906-913. The reasonableness of the police conduct is an important factor in the analysis. As this Court has explained, "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right." *Id.* at 919 (quoting *Michigan* v. *Tucker*, 417 U.S. at 447). The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Leon*, 468 U.S. at 919.

The overall reliability and usefulness of certain kinds of law enforcement information systems may support an exception to the exclusionary rule when police rely in good faith on information present in those systems. The record in this case, however, does not adequately present that issue for the Court's consideration at this time. Development of any general principles regarding the extension of the good faith exception to situations where police rely upon erroneous information contained in law enforcement computer-information systems should, in our view, await a case in which relevant characteristics of such systems and the legal questions they pose can be thoroughly explored.

C. The Court Should Reverse the Decision of the Arizona Supreme Court and Remand the Case For Further Proceedings

The Arizona Supreme Court incorrectly held that the exclusionary rule should apply in this case irrespective of whether court personnel or the police were responsible for the erroneous warrant information that led to respondent's arrest. That decision should therefore be reversed, and the case should be remanded for further proceedings to determine whether suppression of the evidence is warranted on the facts of this case. The transcript of the suppression hearing suggests that court personnel, rather than police personnel, were responsible for the clerical error that led to respondent's arrest. See pp. 3-4 & note 2, *supra*. As the state supreme court noted, however, the trial judge "made no express finding with respect to responsibility for the error, apparently concluding it did not matter." Pet. App. 5a. Because the trial court did not make specific findings, this Court should return the case to the

Arizona court system for determination of the facts necessary to resolve respondent's suppression motion.

CONCLUSION

The judgment of the Arizona Supreme Court should be reversed and the case should be remanded for further proceedings.

Respectfully submitted.

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JULY 1994

APPENDIX

Arizona Revised Statutes Annotated § 13-3883 (1989 & Supp. 1993) provides, in relevant part:

> A. A peace officer may, without a warrant, arrest a person if he has probable cause to believe:
>
> * * * * *
>
> 2. A misdemeanor has been committed in his presence and probable cause to believe the person to be arrested has committed the offense.
>
> * * * * *
>
> 4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested under this paragraph is eligible for release under § 13-3903.

Arizona Revised Statutes Annotated § 13-3887 (1989) provides, in relevant part:

> Method of arrest by officer by virtue of warrant:
>
> When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest * * *. The officer need not have the warrant in his possession at the time of the arrest, but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.

Arizona Revised Statutes Annotated § 13-3903 (1989) provides, in relevant part:

> A. In any case in which a person is arrested for an offense that is a misdemeanor or a petty offence, the arresting officer may release the arrested person from custody in lieu of taking such person to the police station by use of the procedure prescribed in this section.

Arizona Revised Statutes Annotated § 28-473 (1989 & Supp. 1993) provides, in relevant part:

> A. * * * [A]ny person who drives a motor vehicle on a public highway within this state at a time when his privilege so to do is suspended, revoked, cancelled or refused or when he is disqualified from driving is guilty of a class 1 misdemeanor.

Arizona Rule of Criminal Procedure 3.2(a) provides, in relevant part:

> [The arrest warrant] shall state the offense with which the defendant is charged and command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county.

(1)

No. 93-1660

IN THE

Supreme Court of the United States

October Term, 1993

STATE OF ARIZONA,

Petitioner,

vs.

ISAAC EVANS,

Respondent,

WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

This case involves the question of whether evidence that has been seized incident to an arrest based upon a police computer record is subject to the exclusionary rule when it is subsequently determined that the warrant had been quashed earlier, but the computer records were not timely updated. The States joined herein as amici urge this Court to quash the ruling of the Arizona Supreme Court. This case presents an important vehicle to clarify the scope of the good faith exception to the exclusionary rule. Applying the good faith exception to the present case would be consistent with the good faith defense accorded to police officers in civil actions when an action for false arrest is brought. The well-reasoned civil standard should be applied to criminal cases. As a result, evidence would not be excluded where a reasonable officer in the same circumstances and possessing the same knowledge as the arresting officer could have believed that probable cause existed. Law enforcement agencies possess the professionalism and legal savvy to perform their duty in a reasonable and sensible fashion. In adopting the tendered standard, this Court will not expect law enforcement to be clairvoyant and likewise not require exclusion of otherwise valid evidence resulting from the arrest. The Amici States have a direct and substantial interest in insuring law enforcement have the tools necessary to perform their duty and protect the citizenry.

SUMMARY OF ARGUMENT

In order to comply with the constitutional mandate of the Fourth Amendment, a search incident to arrest is valid only when probable cause supports the arrest. Probable cause to justify an arrest without a warrant is defined as facts and circumstances within the arresting officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing under the circumstances shown that the suspect has committed, is committing, or is about to commit an offense. *Michigan v. DeFillippo,* 443 U.S. 31 (1979). Under this standard, relying on a computer report of an outstanding warrant, with nothing more, satisfies the probable cause standard. The outstanding warrant certainly requires the prudent officer to arrest the suspect. Since the arresting officer has no knowledge that can be directly chargeable to him concerning the validity of the warrant, the officer's failure to arrest could amount to malfeasance. This has been recognized in civil cases where an officer's good faith arrest immunizes him from civil liability.

This probable cause standard, when applied to the facts herein, requires this Court to determine whether an agency's knowledge that a warrant has been quashed may be charged to the officer effectuating the arrest based on a computer record. Since there is no direct contact between the arresting officer and the issuing agency, the knowledge of the warrant being quashed should not be chargeable to the arresting officer. In order to find this, this Court must give a narrow construction to the constructive knowledge of the fellow officer rule of *Whiteley v. Warden,* 401 U.S. 560 (1971).

If the arresting officer is not charged with the knowledge that the warrant was quashed, any evidence obtained from a search incident to the arrest should be subject to a good faith exception to the exclusionary rule.

This would require the government to establish that the officer, based on a mistake of fact, in good faith arrested the suspect. This would further the main purpose behind the exclusionary rule to deter police misconduct. Here, the deterrent effect of the exclusionary rule would not be served and therefore a good faith mistake exception to the exclusionary rule should be adopted by this Court.

ARGUMENT

THE EXCLUSIONARY RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE WHICH HAS BEEN SEIZED INCIDENT TO AN ARREST BASED UPON A POLICE COMPUTER RECORD OF AN OPEN WARRANT THAT HAD BEEN QUASHED EARLIER, REGARDLESS OF WHETHER POLICE OR COURT PERSONNEL WERE RESPONSIBLE FOR THE QUASHED WARRANT'S CONTINUED PRESENCE IN A POLICE COMPUTER RECORD.

In *State v. Evans,* 866 P.2d 868 (Ariz. 1994), the Arizona Supreme Court adopted a per se rule which requires the exclusion of all evidence, pursuant to the Fourth Amendment, whenever it is obtained during a search incident to an arrest based upon an erroneous computer record which did not reflect that the arrest warrant had been quashed. The Court held that an arrest, based entirely on an erroneous computer entry, is a warrantless arrest and is unlawful since it lacks probable cause. This holding was based on the reasoning that the arrest was not the result of a reasonable judgmental error of the arresting officer concerning facts which might result in probable cause because the knowledge that the warrant was previously quashed was imputed to the arresting officer.[1] The Court then reasoned that since the arrest, based on the collective police knowledge rule, was without probable cause, the arresting officer's good faith reliance on the computer information is irrelevant because the arrest was based on a nonexistent warrant and not one that was later invalidated, but was relied on in good faith. Therefore, the Court refused to apply or extend the good faith exception to the Fourth Amendment exclusionary rule as established by this Court in *United States v. Leon,* 468 U.S. 897 (1984).

1 The Arizona Supreme Court's holding on this point is based on the collective police knowledge rule of *Whiteley v. Warden,* 401 U.S. 560 (1971) and *United States v. Hensley,* 469 U.S. 221 (1985). Although the Court never cites these cases, the decision clearly rests on this rule of law.

The Amici States submit that this per se rule of suppression is an erroneous interpretation of *Whiteley v. Warden,* 401 U.S. 560 (1971) and *Leon.* This erroneous interpretation resulted in an overly restrictive misapplication of the law to the facts herein.

In *Whiteley,* this Court applied the "fellow officer" or "collective knowledge" rule to warrantless arrests. In *Whiteley,* an arrest warrant was obtained by a county sheriff. The sheriff then issued a message through a statewide law enforcement radio network describing the suspect, his car and the property taken. The message did not specify the evidence that gave the sheriff probable cause to believe the suspect had committed the crime. Another police agency acting upon the radio message, stopped the suspect and searched the car. This Court concluded that since the sheriff had lacked probable cause to obtain the warrant, the evidence obtained by the second police agency during the search had to be excluded. The specific rule of law established in *Whiteley* is that under the "fellow officer" or "collective knowledge" rule, the propriety of a warrantless arrest is determined not solely by whether the arresting officer has personal knowledge of facts which show probable cause, but by whether other policemen who have directed the arrest have such knowledge.

In *United States v. Hensley,* 469 U.S. 221 (1985), this Court directly applied the *Whiteley* probable cause arrest rule to a *Terry*[2] stop effected to investigate a prior crime. This Court held that a stop based on a flyer bulletin is

2 *Terry v. Ohio,* 392 U.S. 1 (1968).

permissible when the officers who issued it and directed others to act upon it had a founded suspicion that the designated person had committed an offense.

The clear and precise holding in *Whiteley* and *Hensley* is that a police officer who arrests or stops a suspect is only chargeable with the collective knowledge of his fellow officer when the arresting officer was affirmatively requested by his fellow officers to take the action so taken. This narrow interpretation of Fourth Amendment precedent has support in this Court's opinion in *California v. Hodari D.*, 499 U.S. 621 (1991). In *Hodari D.*, this Court narrowly defined a Fourth Amendment seizure to be the actual application of physical force to restrain movement but did not include an officer's order to stop when it was ignored by the suspect who then fled.

This interpretation of *Whiteley* and *Hensley* is also in consonance with this Court's definition of probable cause. Probable cause to justify an arrest without a warrant is defined as facts and circumstances within the arresting officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing under the circumstances shown that the suspect has committed, is committing, or is about to commit an offense. *Michigan v. DeFillippo,* 443 U.S. 31 (1979). Under this standard, relying on a computer report of an outstanding warrant, with nothing more, satisfies the probable cause standard. The outstanding warrant certainly requires the prudent officer to arrest the suspect. Since the arresting officer has no knowledge that can be directly chargeable to him concerning the validity of the warrant, the officer's failure to arrest could amount to malfeasance. This has been recognized in civil cases where an officer's good faith arrest immunizes him from civil liability. *Hunter v. Bryant,* 502 U.S. ____, 112 S.Ct. 534 (1991).

Since the "good faith mistake" doctrine has been implemented in civil cases under facts similar to those herein, Amici submit that application of this doctrine should be extended to criminal cases. This position is supported by the Court's decision in *Leon* to establish, for the first time, a good faith exception to the exclusionary rule. Although this Court recognized that, in *United States v. Williams,* 622 F.2d 830 (5th Cir. 1980) *(en banc), cert. denied,* 449 U.S. 1127 (1981), the Fifth Circuit had adopted a good faith exception to the exclusionary rule broader than the one announced in *Leon,* this Court did not adopt the reasoning of *Williams* in *Leon.* Amici seek to have this Court adopt the analysis of *Williams* in this case. *Id.* at 913, n.11.

The *Williams'* good faith exception to the exclusionary rule, which was not specifically disapproved of in *Leon,* is twofold. First, as was recognized in *Leon,* the exception consists of good faith based on technical violations. Second, yet unrecognized by this Court, it consists of good faith based on mistake of fact or law. Under the good faith based on mistake of fact or law standard, "evidence is not to be suppressed...where it is discovered by officers in the course of actions that are taken in good faith and in the reasonable, though mistaken, belief that they are authorized." *Williams, supra* at 840.

The mistaken belief good faith exception to the exclusionary rule should be acknowledged by this Court. In so doing, this Court will further the main purpose of the exclusionary rule. As this Court stated in *United States v. Peltier,* 422 U.S. 531, 542 (1975):

> If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with

knowledge, that the search was unconstitutional under the Fourth Amendment.

Application of the foregoing standard herein establishes the officer's good faith in arresting the Respondent. Under a narrow interpretation of *Whiteley,* the only facts chargeable to the arresting officer was a presumptively valid warrant. As such, he could not know that the warrant had been executed but not removed from the computer records. Therefore, based on the only knowledge the officer had, the search was constitutional since it was supported by a valid warrant. The arrest and subsequent search were made through a good faith mistake that the warrant was still open. Therefore, exclusion of the evidence would not be in accordance with the main purpose behind the exclusionary rule.

Adoption of the foregoing rule would not leave an aggrieved party without remedies. As with all good faith defenses, it is the government's responsibility to prove that it existed. If it is shown that the arresting officer had any knowledge which may give a reasonable man doubt that the warrant was still valid, then good faith reliance might not exist. If the suspect produces documents showing the warrant was satisfied, the arresting officer could be required to take an intermediate step to determine the validity of the warrant. The officer could be required to detain the suspect without a search until the validity of the warrant is determined. If the warrant is invalid, the intrusion into the individual's rights was only minimal since a search did not occur.

A second remedy would be available to an aggrieved party upon proof that the agency that originally issued the warrant acted in bad faith. Allegations of illegal searches and seizures, whether in the criminal or civil context, are always reviewed under the Fourth Amendment "objective reasonableness" standard. *Graham v. Conner,* 490 U.S. 386 (1989). This can be done with a showing of a lack of probable cause

for the warrant, without a good faith reliance thereon. It can also be established with a showing of deliberate indifference or utter disregard for removing executed warrants from computer records.

Adoption of the foregoing rule of law would serve the exclusionary rule well as evidence uncovered by officers during a search conducted pursuant to a good faith mistake would not be suppressed. The rule would also serve the deterrent purpose since evidence would still be subject to exclusion in the absence of good faith and would also be subject to exclusion if the issuing agency acted improperly in securing the warrant or removing the warrant from computer records. Thus, the interests of all parties would be served by the adoption of the rule of law espoused herein.

Such a rule or law would also be consistent with the good faith defense to civil liability. A police officer has a good faith defense for false arrest when he can establish that a reasonable officer in the same circumstances and possessing the same knowledge as the arresting officer could have believed that probable cause existed. Actual probable cause is not necessary for an arrest to be objectively reasonable. *Lowe v. Aldridge,* 958 F.2d 1565 (11th Cir. 1992). Therefore, adoption of the good faith mistake exception to the exclusionary rule would not encourage law enforcement agencies to disregard the law, because they would still face the sanction of money judgments for civil rights violations.

Finally, extension of the good faith exception based on mistake would be consonant with the *Leon* good faith exception since it is also grounded in civil liability law. As this Court has held in *Malley v. Briggs,* 475 U.S. 335, 344-345 (1986), "[o]nly where the warrant is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost." This is the same as the *Leon* standard — a good faith

exception is not permitted when it is objectively ascertainable that a reasonably well trained officer would have known that the affidavit upon which the warrant was based was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

CONCLUSION

The States joining the brief submit that the decision of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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No. 93-1660

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF ARIZONA, *Petitioner*

v.

ISAAC EVANS, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE WASHINGTON LEGAL FOUNDATION, ALLIED EDUCATIONAL FOUNDATION, CITIZENS FOR LAW AND ORDER, PARENTS' ASSOCIATION TO NEUTRALIZE DRUG & ALCOHOL ABUSE, APACHE COUNTY ATTORNEY'S OFFICE, GILA COUNTY ATTORNEY'S OFFICE, NAVAJO COUNTY ATTORNEY'S OFFICE, PINAL COUNTY ATTORNEY'S OFFICE, CITY OF GLENDALE POLICE DEPARTMENT, CITY OF TEMPE, VICTIM/WITNESS SERVICES, THE SEXUAL ASSAULT RECOVERY INSTITUTE, PARENTS OF MURDERED CHILDREN, AND CASA DE YUMA AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the exclusionary rule requires the suppression of evidence obtained by law enforcement officers acting in reliance upon a facially-valid police radio report that a warrant for the defendant's arrest exists.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No. 93-1660

STATE OF ARIZONA, *Petitioner*

v.

ISAAC EVANS, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE WASHINGTON LEGAL FOUNDATION, ALLIED EDUCATIONAL FOUNDATION, CITIZENS FOR LAW AND ORDER, PARENTS' ASSOCIATION TO NEUTRALIZE DRUG & ALCOHOL ABUSE, APACHE COUNTY ATTORNEY'S OFFICE, GILA COUNTY ATTORNEY'S OFFICE, NAVAJO COUNTY ATTORNEY'S OFFICE, PINAL COUNTY ATTORNEY'S OFFICE, CITY OF GLENDALE POLICE DEPARTMENT, CITY OF TEMPE, VICTIM/WITNESS SERVICES, THE SEXUAL ASSAULT RECOVERY INSTITUTE, PARENTS OF MURDERED CHILDREN, AND CASA DE YUMA AS AMICI CURIAE SUPPORTING PETITIONER

INTEREST OF THE AMICI

The Washington Legal Foundation (WLF) is a national non-profit, public interest law and policy center with over 100,000 members and supporters nationwide whose interests WLF represents. WLF engages in litigation and

the administrative process in a variety of areas of the law, and devotes substantial resources to criminal law issues and victims' rights. WLF and its members are deeply concerned about the toll that illegal drugs and crime take on law-abiding citizens, and believe that law enforcement should not be hampered by a wooden application of the exclusionary rule.

WLF believes that this Court's decision in *United States* v. *Leon*, 468 U.S. 897 (1984), which established the so-called "good faith" exception to the exclusionary rule, is applicable in this case. WLF has appeared before this Court as an *amicus curiae* in a number of cases dealing with criminal law issues and the exclusionary rule. See, *e.g.*, *Davis* v. *United States*, 62 U.S.L.W. 4587 (U.S. June 24, 1994); *Payne* v. *Tennessee*, 111 S. Ct. 2597 (1991).

The Allied Educational Foundation (AEF) is a non-profit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, including criminal law and public policy. AEF has appeared before this Court as an amicus curiae along with WLF in a number of criminal law cases raising constitutional issues.

Citizens for Law and Order (CLO) is a non-profit, grass-roots organization founded in 1970 in Oakland, California, to counter the erosion in the effectiveness of the criminal justice system. CLO has assisted concerned citizens in strengthening and preserving law and order in their communities, states, and nation through educational, informational, and civic programs.

Parents Association to Neutralize Drug & Alcohol Abuse, Inc. (PANDAA) is a national non-profit organization dedicated to curtailing illegal drug use, especially by our nation's youth.

The Maryland Coalition Against Crime (MCAC) is a non-profit organization based in Baltimore, Maryland. MCAC works for enactment of measures that promote tougher law enforcement and the rights of crime victims.

The Apache County, Gila County, Navajo County, and the Pinal County Attorney's Offices charge and prosecute those arrested for violating criminal laws. The City of Glendale Police Department arrests criminal suspects and necessarily relies on information from other law-enforcement agencies in order to carry out its law-enforcement duties. The City of Tempe is a municipality in Arizona which has a police department and city prosecutor whose duties include the arrest and prosecution of criminal offenders. All of these governmental units are concerned that the lower court decision in this case will unduly hamper their ability to prosecute successfully criminal defendants to the detriment of the law-abiding public in their respective jurisdictions.

The Victim/Witness Services, the Sexual Assault Recovery Institute, Parents of Murdered Children (Tucson Chapter), and Casa de Yuma are non-profit victim services organizations in Flagstaff, Phoenix, Tucson, and Yuma, Arizona, respectively. They are concerned that the lower court ruling would hamper the successful prosecution of violent offenders and thereby allow criminals to continue to prey upon innocent victims.

All of the amici are concerned with the implications of the lower court decision, and believe that they can provide a broader perspective to this case that will assist the Court in deciding it. This brief is filed with the written consents of the parties, which are on file with the Clerk of the Court.

STATEMENT

1. On January 5, 1991, respondent Isaac Evans drove the wrong way down a one-way street in Phoenix, Arizona, passing in front of a patrol car in which Officers

Sargent and Lumley were filling out paperwork. When Officer Sargent directed respondent to stop and asked him for his driver's license, respondent answered that his license had been suspended. Officer Sargent returned to his patrol car in order to check the computer to determine whether respondent was the subject of an outstanding arrest warrant. After doing so, Officer Sargent was told that there was an outstanding arrest warrant for respondent for the misdemeanor of failing to appear in court on the traffic offense of driving without a license. The officers placed respondent under arrest because of the warrant. While he was being handcuffed, respondent discarded a marijuana cigarette. After searching respondent's car, the officers discovered an additional quantity of marijuana. Pet. App. 2a, 22a-23a; J.A. 15-25.

Unbeknownst to the field officers at the time of the arrest, the arrest warrant was no longer in effect. Respondent was scheduled to appear on December 12, 1990, in the East Phoenix Justice Court for the traffic offense of driving with a suspended license, but he did not show up. The next day, that court issued a bench warrant for respondent's arrest. Six days later, however, on December 19, respondent appeared in the Central Phoenix Justice Court, and the justice of the peace ordered the warrant quashed. Unfortunately, that fact was not conveyed to the sheriff's office, which, upon his request, informed Officer Sargent that the December 13 warrant for respondent's arrest was still outstanding. Pet. App. 2a, 22a-23a; J.A. 26-30.

2. Respondent was charged with possession of a controlled substance in violation of Arizona law. Before trial, he moved to suppress the marijuana, claiming that his arrest was unlawful, since the warrant had been quashed. He also argued that the evidence should not be admitted under the "good faith" or "reasonable mistake" exception to the exclusionary rule adopted in *United States* v. *Leon*, 468 U.S. 897 (1984), since "the exclusionary rule does apply where the police department is responsible for not keeping its computer entries up to date." J.A. 5.

At an evidentiary hearing on the motion, J.A. 14-54, officials from the court clerk's and sheriff's offices described the procedure followed when a bench warrant is quashed. In that situation, an officer at the court clerk's office telephones the jail and so advises the sheriff's office. The court clerk records in the case file the nature of the call and the person at the sheriff's office who received it. The clerk later will "double-check" the case file before disposing of it. J.A. 29-35. The sheriff's office employee also records the information in the file jacket, including the date the information is received and the identity of the person sending it, before running a warrant check to ensure that the warrant has been cleared. J.A. 39-41, 44-45. In respondent's case, however, there was no notation in the court file or the sheriff's file that such a telephone call was made. The witnesses testified that the omission indicated that no such call had been placed, but they also conceded the possibility that a call had been made without being recorded. J.A. 29-32, 42-43.[1]

The court granted respondent's suppression motion. J.A. 53. The court did not make a finding as to whether the clerk's office was negligent in failing to transmit, or the sheriff's office was negligent in failing to record, the information that the warrant had been quashed. Instead, the court held that since both offices were state actors, the state was negligent in not properly recording the cancellation of the warrant, and suppression was required. J.A. 51-52.

3. The state appealed, and the Arizona Court of Appeals, by a divided vote, reversed the trial court's suppression order. Pet. App. 22a-40a. The court of

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[1] The clerk gave the opinion that the omission was due to the fact that a new judge handled respondent's case and wrote the order quashing the warrant on a form in a location and manner different from the ones that had been used by the regular judge. J.A. 32. The trial court, however, later sustained a defense objection to similar testimony by the clerk, on the ground that her opinion was speculative. J.A. 35.

appeals started from the premise that "the purpose of the exclusionary rule is to deter unlawful *police conduct*," *id.* at 32a (emphasis in original), and that no such conduct was at issue here, *id.* at 34a-35a. The court explained that the arresting officers' actions were "objectively reasonable" under *Leon*, since they "had absolutely no way of knowing that [respondent's] arrest warrant had been quashed." *Id.* at 34a. The court added that "the exclusionary rule is not intended to deter justice court employees or Sheriff's office employees who are not directly associated with the arresting officers or the arresting officers' police department." *Id.* As a result, the court concluded that suppressing evidence due to "a clerical error outside of the control of the Phoenix Police Department would not deter the justice court employees or the Sheriff's Office employees from making such errors in the future," nor would suppression deter the police from relying on computer reports of outstanding warrants, since "there was no[ ] indication" that the arresting officers or the police department was negligent in relying on the report of the outstanding arrest warrant. *Id.* at 34a-35a.

4. Respondent appealed, and the Arizona Supreme Court, by a divided vote, reversed the judgment of the state court of appeals. Pet. App. 1a-21a. The court assumed that the clerk, rather than the sheriff's office, was negligent in reporting existence of the arrest warrant, but concluded that the exclusionary rule should be applied nonetheless. *Id.* at 5a, 8a. The court distinguished *Leon* on the ground that it involved a warrant based on an insufficient showing of probable cause, whereas this case involved a warrantless arrest. *Id.* at 6a. The court found *Leon* inapplicable, since this case involved "the performance of purely ministerial functions, not the exercise of judicial discretion." *Id.* at 9a. The court deemed it "useful and proper" to apply the exclusionary rule "where negligent record keeping (a purely clerical function) results in an unlawful arrest," because suppressing evidence "will hopefully serve to improve the efficiency of those who keep records in our criminal justice system." *Id.* Expressing horror at the prospect that "[a]s automation

increasingly invades modern life, the potential for Orwellian mischief grows," the court found exclusion of evidence a sensible result, because, in the court's view, "[i]t is repugnant to the principles of a free society that a person should ever be taken into police custody because of a computer error precipitated by government carelessness." *Id.* at 10a. Finally, the court found "anomalous" a rule permitting evidence to be introduced if court personnel, rather than police officers, were to blame for poor recordkeeping. *Id.* at 11a.[2]

SUMMARY OF ARGUMENT

A. This Court held in *Leon* that the exclusionary rule should not be applied to police the courts' mistakes in issuing search (or arrest) warrants. That rule governs this case, because personnel in the Phoenix courts, not the sheriff's office, were responsible for failing to record and transmit the recall of the arrest warrant for respondent. Since police misconduct did not cause any error in the recordkeeping or transmission of that information, application of the exclusionary rule is unwarranted.

B. Suppression is inappropriate because it was reasonable for the officers to rely on the radio report that respondent was subject to arrest. This Court has indicated that police officers should not be held liable in damages for relying on such reports even if they are erroneous, and has said that the same test of objective reasonableness governs the good faith exception to the exclusionary rule. Courts should be more reluctant to exclude evidence than to impose damages, since exclusion penalizes the blameless. Since the police should be encouraged to rely

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[2] In the brief in opposition, respondent's counsel notes that he is unaware of respondent's location, perhaps indicating that respondent has left the jurisdiction. Respondent's absence does not render this case moot, because the state would be free to prosecute respondent if the judgment below is reversed. See, *e.g.*, *United States* v. *Sharpe*, 470 U.S. 675, 681 n.2 (1985) (collecting cases); *United States* v. *Rodriguez*, 469 U.S. 1 (1984).

on police reports that an arrest warrant exists for a suspect, the exclusionary rule should not be applied.

ARGUMENT

THE EXCLUSIONARY RULE SHOULD NOT BE APPLIED TO SUPPRESS EVIDENCE OBTAINED BY THE POLICE RELYING ON A FACIALLY-VALID REPORT OF AN ARREST WARRANT OUTSTANDING FOR A SUSPECT

Since the days of the hue and cry, law enforcement officers have relied on the citizenry and their fellow officers for physical assistance and information in criminal investigations. Consulting fellow officers or other knowledgeable officials is a particularly valuable practice and is commonly done by patrol officers who must arrest a suspect, in light of the risk that arises in that setting. Because even routine encounters can result in violent or fatal confrontations if a suspect fears that he will be arrested,[3] it is standard practice for law enforcement officers to determine whether there is an arrest warrant outstanding for the suspect of even a minor traffic offense. Ordinarily, an officer will contact the police dispatcher at headquarters via radio to check for what is known in the vernacular as outstanding "wants and warrants," or he will run a computer check himself if his patrol car is adequately equipped. That "routine" or "standard" practice is followed nationwide by law enforcement agencies.[4]

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[3] See, *e.g.*, *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977); *United States* v. *Robinson*, 414 U.S. 218, 234-35 & n.5 (1973); *Adams* v. *Williams*, 407 U.S. 143, 148 n.3 (1972); Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. Crim. L.C. & P.S. 93 (1963).

[4] See, *e.g.*, *People* v. *Mitchell*, 678 P.2d 990, 991 (Colo. 1984) (describing practice as a "routine procedure"); *People* v. *Jennings*, 430 N.E.2d 1282, 1283 (N.Y. 1981) ("standard procedure"); 2 W. LaFave, *Search and Seizure* § 3.5, at 2 (2d ed. 1987); *e.g.*, *United States* v. *Hensley*, 469 U.S. 221, 224 (1985).

If an officer makes an arrest based on an outstanding arrest warrant for the suspect and that warrant is later upheld as valid, the Fourth Amendment has been satisfied, and any evidence obtained as the result of the arrest (and any ensuing search of the suspect or his vehicle) is admissible. See, *e.g.*, *New York* v. *Belton*, 453 U.S. 454 (1981); *United States* v. *Robinson*, 414 U.S. 218 (1973). By contrast, if an officer arrests a suspect after being told that there is a warrant for his apprehension, but in fact there is no such warrant or the warrant was erroneously issued (because, for example, there was insufficient evidence to establish probable cause), the arrest is invalid. Otherwise, law enforcement officers could readily undo the Fourth Amendment simply by working in teams. See, *e.g.*, *Whiteley* v. *Warden*, 401 U.S. 560 (1971).

The question in this case does not involve the lawfulness of respondent's arrest. The bench warrant issued on December 13, 1990, for his arrest was quashed three weeks before he was stopped for a traffic offense and thus cannot justify the seizure. "A void warrant cannot be the basis for a valid arrest." *State* v. *Trenidad*, 595 P.2d 957, 958 (Wash. App. 1979). But the issue whether the Fourth Amendment has been violated is distinct from the question whether the exclusionary rule should be applied, and only the latter question is relevant here.

It is settled that the exclusionary rule should not automatically be applied to every Fourth Amendment violation. The Court has made clear on numerous occasions that the exclusionary rule, in Professor Anthony Amsterdam's words, "is a needed, but grudgingly taken, medicament; no more should be swallowed than is needed to combat the disease." *Search, Seizure, and Section 2255: A Comment*, 112 U. Pa. L. Rev. 378, 389 (1964); see, *e.g.*, *Stone* v. *Powell*, 428 U.S. 465 (1976); *United States* v. *Calandra*, 414 U.S. 338 (1974). Moreover, this Court has held on three occasions -- *United States* v. *Leon*, 468 U.S. 897 (1984), *Massachusetts* v. *Sheppard*, 468 U.S. 981 (1984), and *Illinois* v. *Krull*, 480 U.S. 340 (1987) -- that the exclusionary rule should not be applied

when law enforcement officers reasonably rely on a search warrant or statute authorizing a search. The benefits from suppressing evidence in those circumstances, the Court concluded, are "marginal or nonexistent," so the exclusionary rule should not be invoked. *Leon*, 468 U.S. at 922.

The lower courts have reached different conclusions about whether the exclusionary rule should be applied in the setting of this case: *viz.*, cases in which law enforcement officers make an arrest based on a warrant that was valid when it was issued, but was later satisfied, quashed, or canceled before a suspect is arrested. Some courts, in cases handed down before and after *Leon*, have held that an arrest based on an invalid or recalled warrant requires suppression if the mistake is due to poor recordkeeping by law enforcement officials or by the government generally.[5] By contrast, other courts have

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[5] See, *e.g.*, *State* v. *Peterson*, 830 P.2d 854 (Ariz. Ct. App. 1991), cert. denied, 113 S. Ct. 465 (1992); *People* v. *Ramirez*, 668 P.2d 761 (Cal. 1983); *People* v. *Howard*, 162 Cal. App. 3d 8, 208 Cal. Rptr. 353 (1985); *People* v. *Fields*, 785 P.2d 611 (Colo. 1990); *People* v. *Mitchell*, 678 P.2d 990 (Colo. 1984); *Albo* v. *State*, 477 So. 2d 1071 (Fla. Ct. App. 1985); *People* v. *Mourecek*, 566 N.E.2d 841, 844-45 (Ill. Ct. App. 1991); *State* v. *Taylor*, 468 So. 2d 617 (La. Ct. App. 1985); *Ott* v. *State*, 600 A.2d 111 (Md. 1992), cert. denied, 113 S. Ct. 295 (1992); *People* v. *Jennings*, 430 N.E.2d 1282 (N.Y. 1981); *State* v. *Gough*, 519 N.E. 2d 842 (Ohio Ct. App. 1986); *State* v. *Trenidad*, 595 P.2d 957 (Wash. Ct. App. 1979); cf. *United States* v. *Mackey*, 387 F. Supp. 1121 (D. Nev. 1975) (same result under Due Process Clause). The court's remarks in *Mackey* are characteristic of the rationale applied by these courts: "Once the warrant was satisfied, five months before defendants arrest, there no longer existed any basis for his detention, and the Government may not now profit by its own lack of responsibility." 387 F. Supp. at 1125. Some courts that have required suppression when the police can be faulted for poor recordkeeping have implied that the contrary rule would apply in situations when law enforcement authorities are blameless. See, *e.g.*, *Ott* v. *State*, 600 A.2d at 115-16 (quoting 2 W. LaFave, § 3.5(d), at 21-22) ("police may not rely upon incorrect or incomplete information when they are at fault in permitting the records to remain uncorrected").

held that suppression is appropriate only if police authorities are blameworthy or negligent in some manner.[6]

In our view, the latter approach is the correct one. The only legitimate justification for the exclusionary rule is its supposed deterrent effect on unlawful police conduct. Where the police have acted in a reasonable manner -- that is, when the police have engaged in conduct that society does not wish to deter -- there is no justification for excluding highly probative evidence due to a mistake by a law enforcement officer, or anyone else for that matter. Suppression is too costly a price for society to be required to pay as a matter of federal law.

A. The Sole Justification For The Exclusionary Rule Is Its Presumed Deterrent Effect On Police Misconduct

At the outset of its discussion, the Arizona Supreme Court, citing *Weeks* v. *United States*, 232 U.S. 383 (1914), and *Mapp* v. *Ohio*, 361 U.S. 643 (1961), announced without elaboration that the "deterrence of police misconduct is but one of the reasons that have been advanced in support of" the exclusionary rule. Pet. App. 4a n.1. Later in its opinion, the court held that suppression was necessary, not because it would deter

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[6] See, *e.g.*, *United States* v. *DeLeon-Reyna*, 930 F.2d 396 (5th Cir. 1991) (en banc); *United States* v. *Towne*, 870 F.2d 880 (2d Cir.), cert. denied, 490 U.S. 1101 (1989); *Taggart* v. *County of Macomb*, 587 F. Supp. 1080 (E.D. Mich. 1982); *In re R.E.G.*, 602 A.2d 146 (D.C. Ct. App. 1992); *Childress* v. *United States*, 381 A.2d 614 (D.C. Ct. App. 1977); *State* v. *Cross*, 396 A.2d 604 (N.J. Super. Ct. 1978); *State* v. *Somfleth*, 492 P.2d 808 (Or. Ct. App. 1972); *Commonwealth* v. *Riley*, 425 A.2d 813 (Pa. Super. Ct. 1981); *Durio* v. *State*, 807 S.W.2d 876, 878 (Tex. Ct. Crim. App. 1991); *State* v. *Lanoue*, 587 A.2d 405 (Vt. 1991). The most common example given of non-negligent conduct is the failure immediately to correct computer records. As the D.C. Court of Appeals wrote in *In re R.E.G.*, 602 A.2d at 149, upholding a three-day delay in updating a suspect's computer file, "[i]t is not reasonable to require law enforcement agencies to instantly update their computer information and the Fourth Amendment does not impose such a stringent demand."

misconduct by the police, but because it might improve the recordkeeping efficiency of clerks in the criminal justice system. *Id.* at 9a.

Those observations indicate that the court below approached this issue from the wrong perspective. The Fourth Amendment does not explicitly or implicitly require suppression of wrongfully seized evidence. The Court repeatedly has made clear that the only legitimate justification for the exclusionary rule is its supposed deterrent effect on police misconduct and that that purpose must be kept in mind when determining whether suppression is appropriate.

1. The exclusionary rule was initially justified as a remedy for the violation of the defendant's right of privacy protected by the Fourth Amendment. See *Weeks* v. *United States*, 232 U.S. at 398. But this Court has repeatedly and squarely rejected that rational, explaining succinctly in *Elkins* v. *United States*, 364 U.S. 206, 217 (1960), that "[t]he rule is calculated to prevent, not to repair. Its purpose is to deter -- to compel respect for the constitutional guarantee in the only effectively available way -- by removing the incentive to disregard it." The exclusionary rule is an irrational remedy for an unlawful invasion of privacy, since it utterly fails to remedy the insult suffered by innocent victims of unreasonable searches and because it supplies a benefit "wholly disproportionate to the wrong suffered" by the guilty. Henry Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 Calif. L. Rev. 929, 951 (1965); see, *e.g.*, *Stone*, 428 U.S. at 486; *United States* v. *Janis*, 428 U.S. 433, 446 (1976); *Calandra*, 414 U.S. at 347; *Linkletter* v. *Walker*, 381 U.S. 618, 637 (1965); see also, *e.g.*, *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984) ("[t]he exclusionary rule provides no remedy for completed wrongs"). Whatever the weight of the original rationale offered to defend the exclusionary rule may be, over the past three decades this Court has made clear that the only viable contemporary justification for the rule is its presumed deterrent effect on police misconduct.

The plurality in *Mapp* v. *Ohio* suggested that the Constitution requires the exclusionary rule, but since then the Court repeatedly has stated that the Fourth Amendment imposes no such requirement. As this Court has explained, the Fourth Amendment "has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons." *Stone*, 428 U.S. at 486. Given the inherent trustworthiness of physical evidence and the societal costs of suppression, application of the exclusionary rule has been carefully "restricted to those areas where its remedial objectives are thought most efficaciously served," *Calandra*, 414 U.S. at 348, which would not be possible if the Fourth Amendment dictated suppression of evidence.

Finally, the last alternative rationale offered for the exclusionary rule -- *i.e.*, its usefulness in protecting the integrity of the judicial process by barring the introduction of tainted evidence, *Elkins*, 364 U.S. at 222-23 -- also has not withstood the test of time. In numerous cases the Court has limited the standing of defendants to assert Fourth Amendment claims and has permitted unlawfully seized evidence to be used for purposes, such as impeachment of the defendant, that would be impermissible if the exclusionary rule protected the integrity of the judicial process. See, *e.g.*, *United States* v. *Padilla*, 113 S. Ct. 1936 (1993); *United States* v. *Havens*, 446 U.S. 620 (1980). "Judicial integrity clearly does not mean that the courts must never admit evidence obtained in violation of the Fourth Amendment." *Janis*, 428 U.S. at 458 n.35. As the Court noted in *United States* v. *Peltier*, 422 U.S. 531, 537-38 (1975), judicial integrity is not offended if law enforcement officials reasonably believed "that their *conduct* was in accordance with law even if decisions subsequent to the search or seizure have held that conduct of the type engaged in by the law enforcement officials is not permitted by the Constitution."

This Court made all those points expressly in *United States* v. *Leon*. The Court explained that "[t]he Fourth

Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands, and an examination of its origin and purposes makes clear that the use of fruits of a past unlawful search or seizure 'work[s] no new Fourth Amendment wrong.'" 468 U.S. at 906 (quoting *Calandra*, 414 U.S. at 354). Instead, the exclusionary rule is "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *Id.* (quoting *Calandra*, 414 U.S. at 348). The propriety of applying the exclusionary rule in a particular situation, the Court recognized, turns on "weighing the costs and benefits" of withholding reliable evidence from the truth-seeking process. *Id.* at 907; see *id.* at 908-13 (cataloging instances in which the Court has found suppression unjustified since the possible benefits of suppression did not outweigh its costs). And "the question whether the use of illegally obtained evidence in judicial proceedings represents judicial participation in a Fourth Amendment violation and offends the integrity of the courts 'is essentially the same as the inquiry into whether exclusion would serve a deterrent purpose.'" *Id.* at 921 n.22 (quoting *Janis*, 428 U.S. at 459 n.35). For those reasons, this Court concluded in *Leon* that, because "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial cost of exclusion," the exclusionary rule should not be applied if a law enforcement officer reasonably relies on a search warrant issued by a magistrate. *Id.* at 922.

2. An important corollary to the foregoing rule is that the exclusionary rule cannot reasonably be deemed likely to have any effect, and therefore should not reasonably be applied, unless a Fourth Amendment violation is directly attributable to willful or, at a minimum, negligent misconduct by *law enforcement officers*. This Court has long explained that "[t]he deterrent purpose of the exclusionary rule necessarily assumes that *the police* have engaged in willful, or at the very least negligent, conduct

which has deprived the defendant of some right." *Michigan* v. *Tucker*, 417 U.S. 433, 447 (1974) (emphasis added). Courts apply the exclusionary rule in the hope of "instill[ing] *in those particular investigating officers, or in their future counterparts*, a greater degree of care toward the rights of an accused." *Id.* (emphasis added). Because "the purpose of the exclusionary rule is to deter unlawful *police conduct*," evidence is properly suppressed "only if it can be said that *the law enforcement officer* had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment." *Peltier*, 422 U.S. at 542 (emphasis added); see also *Krull*, 480 U.S. at 348-49; *Michigan* v. *DeFillippo*, 443 U.S. 31, 38 n.3 (1979); *Stone*, 428 U.S. at 539-40; *Janis*, 428 U.S. at 459.

As this Court explained in *Leon* "the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates." 468 U.S. at 916. Experience, the Court noted in *Leon*, also militates in favor of that principal. "[T]here exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Id.* (footnote omitted). Beyond that, the Court in *Leon* "discern[ed] no basis, and [was] offered none, for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate." *Id.* at 916 (footnote omitted). Moreover, "to the extent that the rule is thought to operate as a 'systemic' deterrent on a wider audience, it clearly can have no such affect on individuals empowered to issue search warrants." *Id.* at 917 (footnote omitted). As the Court elaborated in *Leon*, "[j]udges and magistrates are not adjuncts to the enforcement team;" they are "neutral judicial officers" with "no stake in the outcome of particular criminal prosecutions," so "[t]he threat of exclusion thus cannot be expected significantly to deter them." *Id.* Finally, because it is unnecessary to suppress evidence to inform judicial officers of their errors, the application of a

reasonable mistake exception to the exclusionary rule would not increase the number or risk of Fourth Amendment violations. *Id.*

This Court applied those principles to uphold the admission of wrongfully seized evidence in the companion case of *Massachusetts* v. *Sheppard*. There, the police applied for a warrant to search the home of a murder suspect. The judge who considered the application and supporting affidavit found probable cause to search the home of the suspect for, among other things, the murder weapon, but he did not make some clerical modifications sought by the officers in the form search warrant normally used for drug cases in order to refer to items in the affidavit, rather than evidence of a narcotics crime. The officers who executed the search, however, limited its scope to the items in the affidavit. This Court concluded that the officers' conduct was "objectively reasonable and largely error-free." 468 U.S. at 990. The officers brought the defects in the warrant to the judge's attention; they were assured by the judge that the defects had been corrected; and they limited their search to what they reasonably believed they had requested. This Court noted that "[a]n error of constitutional dimension may have been committed with respect to the issuance of the warrant," because it did not correctly describe the place to be searched, "but it was the judge, not the police officers, who made the critical mistake." *Id.* Because "the exclusionary rule was adopted to deter unlawful searches by police, not to punish the errors of magistrates and judges," the Court found suppression inappropriate. *Id.* (citation and internal punctuation omitted).

B. Applying The Exclusionary Rule To Suppress Evidence Obtained In Reliance On A Facially-Valid Police Report That There Is A Warrant For A Suspect's Arrest Would Not Further Its Deterrent Purposes

When the question presented by this case is analyzed from the correct perspective, the answer follows logically

from this Court's precedents, for either of two reasons. *First*, it follows from *Leon* and *Sheppard* that the exclusionary rule should not be applied when police misconduct did not cause any error in the recordkeeping or transmission of information about an arrest warrant. That proposition requires reversal of the judgment below, since the best view of the evidence is that personnel at the Central Phoenix Justice Court, not the Maricopa County Sheriff's Office, were responsible for the failure to record and transmit the recall of the arrest warrant for respondent. *Second*, it follows from *Whitley*, *United States* v. *Hensley*, 469 U.S. 221 (1985), *Malley* v. *Briggs*, 475 U.S. 335 (1986), and *Anderson* v. *Creighton*, 483 U.S. 635 (1987), that the exclusionary rule should not be applied when officers on the scene reasonably rely on a radio report that there is an arrest warrant outstanding for a suspect. Because there was no reason for Officers Sargent and Lumley to doubt the reliability of the report that a bench warrant existed for respondent's arrest, their reasonable reliance on that report should not be penalized by the exclusionary rule. For either reason, the judgment below should be reversed.

1. *The exclusionary rule should not be applied if an error in recordkeeping or transmission of arrest warrant information is not due to police misconduct*

Leon and *Sheppard* make clear that the only justification for the exclusionary rule is its presumed deterrent effect on law enforcement misconduct. The rule thus should not be applied to police the actions of the judiciary, rather than law enforcement officers. That broad principle embraces this case. The actions of court personnel, such as clerks, should be deemed actions of the court, not law enforcement. In addition, the best view of the evidence in this case shows that any fault was due to negligence by judicial personnel, not the officers who stopped and arrested respondent.

a. For Fourth Amendment purposes, officials or employees of the court stand in the shoes of the judges they assist. Like judges, officers or employees of the courts are not "adjuncts to the law enforcement team." *Leon*, 468 U.S. at 917. They, too, "have no stake in the outcome of particular criminal prosecutions," *id.*, because they play no role in the apprehension of suspects or acquisition of evidence to establish their guilt. Their role in the criminal justice system is not only limited, since they have little or no decisionmaking authority over the disposition of a case, but also is entirely subordinate to that of the judges for whom such officials work, since there is no administrative responsibility they enjoy in the criminal justice system that cannot be altered or undone by the court. In addition, there is no need to apply the exclusionary rule in order to correct any mistakes made by court personnel. As officers or employees under the supervision of the court, judicial branch personnel are subject to discipline or correction by the judge for whom they work (or the chief judge of the relevant court) in a far more direct and immediate way (such as through suspension) than would be the case if the exclusionary rule were applied. Cf. *INS* v. *Lopez-Mendoza*, 468 U.S. at 1044-45 (describing similar INS mechanism to deter Fourth Amendment violations).

This Court's decision in *Shadwick* v. *City of Tampa*, 407 U.S. 345 (1972), is directly relevant in this regard. The question in *Shadwick* was whether the Fourth Amendment prohibited Tampa from authorizing municipal court clerks to issue arrest warrants for persons charged with the breach of municipal ordinances. In rejecting that claim, this Court made clear that such clerks possessed the "neutrality and detachment" required by the Fourth Amendment to make probable cause determinations because they were "sever[ed] and detach[ed] from law enforcement." 407 U.S. at 350. "The municipal court clerk is assigned not to the police or prosecutor but to the municipal court judge for whom he does much of his work. * * * [H]e is removed from prosecutor or police and works within the judicial branch subject to the

supervision of the municipal court judge." *Id.* at 351. Because of the absence of any showing of "partiality" or "affiliation of these clerks with prosecutors or police," *id.* at 350, the Court unanimously held that municipal court clerks could be vested with the authority to issue arrest warrants.

Also instructive are decisions by this Court and the lower courts on the issue of the immunity enjoyed by court officers in suits brought against them under 42 U.S.C. § 1983. It is well-settled that judges enjoy absolute immunity from suits for money damages for all actions taken in their judicial capacity, unless the actions are taken in the total absence of jurisdiction. See, *e.g.*, *Mireles* v. *Waco*, 112 S. Ct. 286 (1991). Numerous courts have ruled that clerks of courts, like judges, are immune from suits for damages that arise out of their performance of tasks integral to the judicial process.[7] Those courts have

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[7] The courts of appeals in almost every circuit have held that quasi-judicial immunity bars damages claims against court officers based on acts carried out pursuant to a court order. See, *e.g.*, *Sindram* v. *Suda*, 986 F.2d 1459 (D.C. Cir. 1993); *Mitchell* v. *Aluisi*, 872 F.2d 577 (4th Cir. 1989) (clerk's negligence in failing to recall a warrant does not state a constitutional claim); *Foster* v. *Walsh*, 864 F.2d 416, 417 (6th Cir. 1988); *Dellenbach* v. *Letsinger*, 889 F.2d 755, 762-63 (7th Cir.), cert. denied, 110 S. Ct. 1821 (1989); *Valdez* v. *Denver*, 878 F.2d 1285, 1287-90 (10th Cir. 1989); *Rogers* v. *Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988) (clerk issuing a warrant at the direction of a judge is performing a function to which absolute immunity attaches and the mere fact that an error was made in the carrying out of the judge's instruction is immaterial); *Mullis* v. *United States Bankruptcy Court*, 828 F.2d 1385, 1390 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988); *Dorman* v. *Higgins*, 821 F.2d 133, 136-39 (2d Cir. 1987); *Tarter* v. *Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981); *Slotnick* v. *Garfinkle*, 632 F.2d 163, 166 (1st Cir. 1980) (extending judicial immunity to court clerk who filled out defendant's commitment papers under the official directive of a judge); *Williams* v. *Wood*, 612 F.2d 982, 985 (5th Cir. 1980) (absolute immunity for clerks acting in a non-routine manner under instructions from the judge). Suits against clerks for damages, like suits against judges, are not needed to prevent the occurrence of unconstitutional conduct given the other available safeguards. Moreover, if the immunity enjoyed by

(continued...)

concluded that the same policies underlying the absolute immunity granted to judges justify a similar grant of immunity to other personnel performing tasks related to the judicial process. Those cases make clear that, at least within the context of immunity, court clerks are considered part of the judiciary, not law enforcement.

If court personnel are properly deemed members of the judiciary, rather than law enforcement, it makes little sense to apply the exclusionary rule to police their mistakes. Since judicial personnel are not "engaged in the often competitive enterprise of ferreting out crime," *Johnson* v. *United States*, 333 U.S. 10, 14 (1948) (footnote omitted), the threat that evidence will be suppressed if they make a mistake in their daily tasks is not likely to have the effect on them that it would have on police officers. If so, then there is all cost and no benefit to application of the exclusionary rule. Perhaps, in the now-famous words of Justice (then-Judge) Cardozo, "the criminal * * * [must] go free because the constable has blundered," *People* v. *Defore*, 150 N.E. 585, 587 (N.Y.), cert. denied, 270 U.S. 657 (1926), but that is only because it is the *constable* who is blameworthy, and not, according to *Leon* and *Sheppard*, a member or employee of the judiciary. In such a case, "[p]enalizing the officer for the

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[7](...continued)
judges did not also extend to their assistants, there is little doubt that "disappointed litigants, blocked by the doctrine of absolute immunity from suing the judge directly, [would] vent their wrath on clerks, court reporters, and other judicial adjuncts." *Dellenbach*, 889 F.2d at 763 (quoting *Scruggs* v. *Moellering*, 870 F.2d 376, 377 (7th Cir.), cert. denied, 493 U.S. 956 (1989)); *Sindram*, 986 F.2d at 1461.

This Court and some lower courts have held that court clerks are not entitled to absolute immunity for performance of "ministerial," nondiscretionary functions. See, *e.g.*, *Antoine* v. *Byers & Anderson, Inc.*, 113 S. Ct. 2167 (1993); *Lowe* v. *Letsinger*, 772 F.2d 308, 313 (7th Cir. 1985). The relevant point, however, is not that judicial officers or employees are always entitled to absolute immunity, but is that the answer to that question hinges on the extent to which their actions parallel that of judges, not law enforcement officers, who never receive absolute immunity for their actions taken in the field. See, *e.g.*, *Anderson* v. *Creighton*, 483 U.S. 635 (1987); *Malley*, 475 U.S. at 339-46.

magistrate's error" -- or that of the magistrate's clerk -- "rather than his own, cannot logically contribute to the deterrence of Fourth Amendment violations." *Leon*, 468 U.S. at 921 (footnote omitted). Here, the failure to correct the computer record was due to an error by the clerk of the Central Phoenix Justice Court, not the Maricopa County Sheriff's Office. This Court's decisions in *Leon* and *Sheppard* therefore are directly applicable here.

The court below saw a difference between *Leon* and *Sheppard*, in which a search warrant existed, but was later held invalid, and this case, in which no warrant existed when respondent was arrested, since it had been quashed. That distinction, however, is immaterial. Neither an outstanding but invalid warrant nor a valid but recalled warrant can justify an arrest; that much is true. But the point is in each case a court found probable cause to exist and the officers involved reasonably relied on that finding. Since the exclusionary rule cannot be expected to deter reasonable police conduct, applying that rule in this case cannot contribute to its deterrent purpose. What it will do (ironically, but predictably) is induce in the police exactly the type of disrespect for the law that generates hostility to Fourth Amendment values -- the precise opposite of the rule's hoped-for effect. Accordingly, because the suppression of evidence in a case like this one cannot measurably contribute toward deterrence of police misconduct and since the exclusionary rule should be applied only when that safely can be said, there is no reason to treat this case differently from *Leon* and *Sheppard*.

b. The evidence in this case does not establish any police misconduct. The East Phoenix Justice Court issued a warrant for respondent's arrest, but the recall of that warrant by the Central Phoenix Justice Court was not communicated to Officer Sargent before respondent was arrested. Testimony by officials from the county court clerk's and sheriff's offices indicated that the error was the fault of the clerk's office, which failed to notify the

sheriff's office about the recall. J.A. 29-34, 39-40. Because it was standard procedure for those officials to place a notation in the file when such a call has been made, the absence of any such notation in the court and sheriff's files raises a presumption that there was no such call. Although both officials found it possible that a call was made but not recorded, J.A. 29-32, 42-43, their willingness to say that this scenario was "possible" is far from proof that it was likely. Also, the Arizona Court of Appeals found the clerk's office at fault, and the Arizona Supreme Court did not disturb that finding. Under these circumstances, it is reasonable to conclude that the clerk's office was negligent, not law enforcement. Suppression is therefore inappropriate.

2. *The exclusionary rule should not be applied when an officer arrests a suspect based on a facially valid report that there is a warrant outstanding*

The judgment below also could be reversed on an alternative ground: namely, since it was reasonable for Officers Sargent and Lumley to rely on the radio report that respondent was subject to arrest, the exclusionary rule should not be applied, because the costs of exclusion outweigh whatever marginal benefits might attend suppression.

In *Whiteley* v. *Warden*, this Court first addressed the subject of an arresting officer's reliance on a police radio report that there is a warrant for a suspect's arrest. There, a state magistrate issued an arrest warrant based on a complaint that failed to establish probable cause. Information about the warrant was transmitted over a statewide radio network, was received by a county's sheriff's office, and was communicated to a local police department. Relying on that bulletin, a patrolman arrested Whiteley and found incriminating evidence in an ensuing search. Although the Court held that the arrest was unlawful because the officer who originally obtained the warrant lacked probable cause to arrest Whiteley, the

Court noted that the arresting officer had acted in good faith. 401 U.S. at 562-68. As Justice Harlan explained for the Court:

> We do not, of course, question that the Laramie police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

Id. at 568. *Whiteley* therefore clearly indicated that the arresting officer could not be faulted for relying on the police radio broadcast that there was an outstanding arrest warrant for the suspect, even though the arrest itself violated the Fourth Amendment.

The Court elaborated on that point in *United States* v. *Hensley*. The Court in that case held that a police officer is entitled briefly to stop and question a person listed in a police "flyer" as wanted for questioning about a robbery. This Court held that a police flyer is sufficient to justify a detention by an officer lacking any personal knowledge of the crime as long as the officers who issued the flyer had reasonable suspicion. 469 U.S. at 231. At the same time, the Court added that patrol officers should not be held blameworthy for detaining a suspect based on a police flyer even if there were no reasonable suspicion to support it. As the Court put it: "In such a situation, of course, the officers making the stop may have a good faith defense to any civil suit." *Id.* at 232, citing, inter alia, *Turner* v. *Raynes*, 611 F.2d 92, 93 (5th Cir.), cert. denied, 449 U.S. 900 (1980). In *Turner*, the Fifth Circuit held that an officer who executes a facially valid warrant is entitled to qualified immunity even if the warrant is later held invalid,

since it is unworkable to expect officers to determine the ultimate legal validity of warrants that appear regular before serving them. 611 F.2d at 93. This Court in *Hensley* therefore signalled (albeit in dictum) that a police officer should not be held liable in a damages action under 42 U.S.C. 1983 for relying on a facially valid police radio report that a suspect is wanted for questioning or is subject to arrest. Other courts have endorsed that reasoning in granting qualified immunity to officers who make arrests in reliance on erroneous computer information.[8] Cf. *Baker* v. *McCollan*, 443 U.S. 137, 145-46 (1979).

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[8] For example, in *Taggart* v. *County of Macomb*, 587 F. Supp. 1080 (E.D. Mich. 1982), a state trooper ran a routine license check through the Law Enforcement Information Network (LEIN). The check resulted in a report that there was an outstanding arrest warrant for the plaintiff, which due to some apparent oversight was not canceled or removed from LEIN six months earlier. The court found that the trooper "acted with reasonable grounds and in good faith in arresting the plaintiff." *Id.* at 1081. The court believed that "a LEIN check is an authoritative source upon which law enforcement officers may justifiably rely in making an arrest." *Id.* The court held "as a matter of law, that absent actual knowledge that an arrest warrant is no longer valid or in effect, it is reasonable for a law enforcement officer to make an arrest based upon information received through the LEIN system." *Id.* at 1082. Requiring the police independently to verify information they receive would place a "stranglehold" on their effectiveness. *Id.*

Similarly, in *Lauer* v. *Dahlberg*, 717 F. Supp. 612 (N.D. Ill. 1989), aff'd, 907 F.2d 152 (7th Cir. 1990), an officer arrested the plaintiff based on a warrant check through the Law Enforcement Data System (LEADS), which indicated that there was an outstanding warrant for the plaintiff's arrest. Apparently, the arrest warrant had been recalled the previous day, but the computer information had yet to be corrected. The plaintiff showed the officer his copy of the warrant recall order at the time of the arrest. Nevertheless, the court held as a matter of law that the defendant was entitled to rely on the information obtained through the LEADS check. Showing the officer a copy of a warrant recall, the court reasoned, is not sufficient to result in the officer having actual knowledge that the warrant was invalid, because an officer in the field is not required to make a judgment as to the validity and authenticity of a recall order. *Id.* at 614. Here, of course, Officer Sargent had no notice of any potential problem with the warrant.

Those decisions go a long way toward the correct resolution of this case, because the issue whether a police officer is entitled to qualified immunity for an unconstitutional search or seizure is not materially different from the question whether the exclusionary rule requires the suppression of evidence for the same conduct. Indeed, this Court has drawn a parallel between the two situations. For example, in *Malley* v. *Briggs*, 475 U.S. at 339-46, this Court ruled that a police officer could be entitled to qualified immunity for obtaining and relying on an arrest warrant later found invalid. In *Mitchell* v. *Forsyth*, 472 U.S. 511 (1985), and *Anderson* v. *Creighton*, 483 U.S. at 644, this Court held that law enforcement officers could receive qualified immunity for conducting an unlawful warrantless search. When those cases are read together with this Court's observations in *Whiteley*, 401 U.S. at 568, and *Hensley*, 469 U.S. at 232, that a police officer should not be held liable for relying on a radio report of the existence of an arrest warrant later held invalid, it is clear that Officers Sargent and Lumley should not be held liable in damages for the arrest of respondent. That conclusion is important because this Court made clear in *Malley* v. *Briggs* that "the same standard of objective reasonableness" governing the qualified immunity analysis under *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), defines the good faith inquiry under *Leon*. 475 U.S. at 344-45. In other words, if Officers Sargent and Lumley should not have to pay in damages for someone else's mistake about the warrant for respondent's arrest, as this Court indicated in *Whiteley* and *Hensley*, then society should not have to pay in the suppression of evidence for the same mistake, as this Court indicated in *Malley*. Considered from either perspective, the officers were entirely blameless and acted reasonably, and neither they nor society should be penalized for any mistake that occurred.

That conclusion makes sense. As this Court explained in *Malley*, courts ought to be less willing to apply the exclusionary rule for unlawful police conduct than to hold an officer personally liable in damages for an unconstitutional search or seizure. On the one hand, the Court

wrote, "[w]hile we believe that the exclusionary rule serves a necessary purpose, it obviously does so at a considerable cost to society as a whole, because it excludes evidence probative of guilt." 475 U.S. at 344. On the other hand, "a damages remedy for an arrest following an objectively unreasonable request for a warrant imposes a cost directly on the officer responsible for the unreasonable request, without the side effect of hampering a criminal prosecution." *Id.* Also, a damages remedy "benefit[s] the victim of police misconduct one would think most deserving of a remedy -- the person who in fact has done no wrong, and has been arrested for no reason, or a bad reason." *Id.* In other words, damages directly compensate the victim of police misconduct and impose their cost on the blameworthy party (the offending officer), whereas suppression achieves its (presumed) benefit indirectly while imposing a cost on the blameless (society). For that reason, if it is inappropriate under *Harlow* to make an officer pay damages, it is unreasonable under *Leon* to make society pay through suppression.

Finally, some weight should be given to the fact that society does not wish to deter (and, in fact, affirmatively wishes to encourage) police reliance on radio reports that an arrest warrant exists for a suspect. Law enforcement has made increasingly widespread use of computers as data banks for information.[9] For example, the National Crime

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[9] See, *e.g.*, *People* v. *Fields*, 785 P.2d at 612 n.2; Office of Technology Assessment, *A Preliminary Assessment of the National Crime Information Center and the Computerized Criminal History System* (1978); FBI Law Enforcement Bulletin (Feb. 1972); J. Taylor DeWeese, *Reforming our "Record Prisons": A Proposal for the Federal Regulation of Crime Data Banks*, 6 Rutgers-Camden L.J. 26, 30 & n.20 (1974); Patrick Hand, Note, *Probable Cause Based on Inaccurate Computer Information: Taking Judicial Notice of NCIC Operating Policies and Procedures*, 10 Fordham Urban L.J. 497, 497, 507 (1982); Judith J. Rentschler, Note, *Garbage In, Gospel Out: Establishing Probable Cause Through Computerized Criminal Information Transmittals*, 28 Hastings L.J. 509, 509 & n.2, 512 (1976); Note, *Extradition: Computer Technology and the Need to*
(continued...)

Information Center (NCIC), established in 1967 and managed by the Federal Bureau of Investigation, functions as a centralized computer bank for use by criminal justice agencies by the federal government and by state and local officials in all 50 states, the District of Columbia, as well as Canada. Among other functions, the NCIC is a valuable investigative tool for law enforcement, because it keeps track of stolen vehicles, boats, securities, license plates, guns, as well as persons for whom there is an outstanding arrest warrant. In addition, a separate division of the NCIC contains computerized criminal histories of offenders. Reliance on such computer systems immeasurably enhances the efficiency of law enforcement. Indeed, such routine cooperation among law enforcement authorities is eminently desirable. "Only by such interchange of information can society be adequately protected against crime." *United States* v. *Alvarez-Sanchez*, 114 S. Ct. 1599, 1605 (1994)(citation omitted).

The lower courts have found such reliance valuable. For instance, the courts have uniformly held that obtaining a "hit" on an NCIC list is a powerful factor in establishing justification for an arrest.[10] Indeed, some courts have gone

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[9](...continued)
Provide Fugitives with Fourth Amendment Protection in Section 1983 Actions, 65 Minn. L. Rev. 891, 891 n.1, 897-99 & n.35 (1981). Relying on a study of New York's computerized criminal history information system, Donald L. Doernberg & Donald H. Zeigler, *Due Process Versus Data Processing: An Analysis of Computerized Criminal History Information Systems*, 55 N.Y.U. L. Rev. 1110 (1980), several courts have criticized such systems on the ground that most "rap sheet" entries are incomplete or inaccurate. That study, however, is almost 15 years old. Moreover, rap sheets, compilations of a person's criminal history, could be more error prone than a list of outstanding warrants.

[10] See, *e.g.*, *United States* v. *Davis*, 568 F.2d 514 (6th Cir. 1978); *United States* v. *Hines*, 564 F.2d 925, 927-28 (10th Cir. 1977), cert. denied, 434 U.S. 1022 (1978); *United States* v. *Palmer*, 536 F.2d 1278, 1283 (9th Cir. 1976); *United States* v. *Williams*, 440 F.2d 1235 (6th Cir.), cert. denied, 404 U.S. 837 (1971); *United States* v. *Nolan*,
(continued...)

so far as to say that "NCIC printouts are reliable enough to form the basis of the reasonable belief which is needed to establish probable cause for arrest." *United States* v. *McDonald*, 606 F.2d 552, 554 (5th Cir. 1979). The reason is that the police are entitled to be judged on the basis of "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," *Hill* v. *California*, 401 U.S. 797, 804-05 (1971) (quoting *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949)); cf. *Illinois* v. *Rodriguez*, 497 U.S. 177 (1990), and it is reasonable to rely on a police report that there is a warrant for a suspect's arrest. If so, it makes little sense to penalize law enforcement through the exclusionary rule for engaging in reasonable conduct, because that is precisely what we desire the police to undertake. It would be irrational to expect them to act differently. See *Leon*, 468 U.S. at 919.

Consider the alternative. Must the police, after lawfully stopping a suspect for a traffic offense (or for some other matter) disregard a report that there is an outstanding arrest warrant for the suspect and permit him to drive away? To paraphrase *Whiteley* v. *Warden*, it would be poor police work for officers simply to shrug their shoulders and permit the suspect to flee. The real lesson of *Mapp* v. *Ohio* -- and the one that the court below should have taken from that case -- is that "[t]here is no war between the Constitution and common sense." 367 U.S. at 657. The Constitution should demand no such illogical and unfortunate result.

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[10](...continued)
416 F.2d 588 (10th Cir.), cert. denied, 396 U.S. 912 (1969); *United States* v. *Avery*, 418 F. Supp. 263, 264 (W.D. Okla. 1976); *Wright* v. *State*, 343 So. 2d 795, 798 (Ala. Crim. App. 1977); *Thomas* v. *State*, 297 So. 2d 850, 852 (Fla. Ct. App. 1974); *Commonwealth* v. *Riley*, 425 A.2d 813, 815-16 (Pa. Super. Ct. 1981).

CONCLUSION

The judgment of the Supreme Court of Arizona should be reversed.

Respectfully submitted.

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JULY 29, 1994

(9)

No. 93-1660

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF ARIZONA,

Petitioner,

—v.—

ISAAC EVANS,

Respondent.

ON WRIT OF *CERTIORARI*
TO THE SUPREME COURT OF ARIZONA

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ARIZONA CIVIL LIBERTIES UNION IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI*[1]

The American Civil Liberties Union (ACLU) is a nationwide nonprofit, nonpartisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Bill of Rights. The Arizona Civil Liberties Union is one of its statewide affiliates. Since its founding in 1920, the ACLU has frequently appeared before this Court, both as direct counsel and as *amicus curiae*. In particular, the ACLU has participated in numerous cases involving the Fourth Amendment and the exclusionary rule. Because this case raises those issues again, its proper resolution is a matter of significant concern to the ACLU and its members.

STATEMENT OF THE CASE

On January 5, 1991, respondent Isaac Evans was stopped for a traffic violation by Officer Bryan Sargent of the Phoenix Police Department. After respondent told the officer that his license had been suspended, the officer checked respondent's name on the police department's computerized information system in his patrol car. *See* J.A. 15-19.

The computer confirmed that respondent's license had been suspended and indicated that there was an outstanding misdemeanor warrant for his arrest. Respondent was then placed under arrest. Petitioner concedes that the officer would not have arrested respondent for either the traffic violation or for driving with a suspended license. Brief of Petitioner at 2. The sole basis for the arrest was the computer report. J.A. 23-25. While arresting respondent, the officer observed a handrolled cigarette fall to the ground. Respondent's vehicle was searched and marijuana was discovered under the

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[1]Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

passenger seat. J.A. 19-22. Respondent was then charged with possession of marijuana, as well.

Prior to trial, respondent moved to suppress the evidence found incident to his arrest. At the suppression hearing, it was determined that the misdemeanor warrant for his arrest had actually been quashed 17 days before his arrest. The warrant, however, had never been expunged from the computer system. The trial court made no factual finding on the source of the error. As the Arizona Supreme Court noted, "there was conflicting evidence concerning whether this mistake was caused by the court staff or law enforcement employees." *State v. Evans*, 866 P.2d 869, 870 (1994). After the suppression motion was granted, petitioner dismissed the charges and appealed.

The Arizona Court of Appeals reversed the trial court, but the Arizona Supreme Court vacated the appellate court decision and affirmed the suppression of the marijuana. The Arizona Supreme Court held that "the trial court did not abuse his discretion" under the facts presented. *Id.* at 872. Without resolving the factual dispute, the state supreme court ruled that respondent's "warrantless arrest, based entirely as it was on an erroneous computer entry, was plainly illegal." *Id.* at 871. The court distinguished *United States v. Leon*, 468 U.S. 897 (1984), because "no warrant at all was in existence at the time of [respondent's] arrest." *Evans*, 866 P.2d at 871. The court viewed *Leon* as a case which involved the exercise of judicial discretion. In contrast, it concluded the computer error here concerned the "performance of purely ministerial functions." *Id.* at 872.

In this Court, petitioner concedes that respondent's arrest violated the Fourth Amendment, Brief of Petitioner at 10, but argues that the exclusionary rule does not apply to the evidence obtained incident to that illegal arrest. Petitioner contends: (1) that the exclusionary rule is applicable only if

police had knowledge, or may properly be charged with knowledge, that their conduct violates the Fourth Amendment; (2) Officer Sargent acted in an objectively reasonable manner when he arrested respondent because the computer indicated an open warrant for his arrest; (3) the erroneous presence of the warrant in the computer was not the fault of police personnel, but of court personnel; (4) because there was no unlawful police misconduct, application of the exclusionary rule would have no deterrent effect in this case.

SUMMARY OF ARGUMENT

Petitioner challenges the ruling below as inconsistent with this Court's exclusionary rule cases. Selecting dicta from previous opinions, petitioner and its supporting *amici* argue that the exclusionary rule is applicable only when an officer has knowledge that an arrest violates the Constitution, or is blameworthy for performing an illegal search or seizure.

Contrary to petitioner's view, however, *Leon* did not adopt an omnibus "good faith" exception to the exclusionary rule. The exception approved in *Leon* "modified somewhat," 468 U.S. at 905, the traditional rule that law enforcement agencies are not permitted to exploit the fruits of unconstitutional conduct. *Leon* and its companion case, *Massachusetts v. Sheppard*, 468 U.S. 981 (1984), sanctioned the use of evidence obtained pursuant to illegal conduct in limited circumstances, namely, where police officers have utilized the warrant process -- the constitutionally preferred mode of procedure for governmental searches and seizures. The reasoning and result in *Leon* did not reflect myopic support for an all-embracing "good faith" exception. Rather, as Justice O'Connor has described, *Leon* relied upon a "tradition of judicial independence," *Illinois v. Krull*, 480 U.S. 340, 365 (1987)(dissenting opinion), to carve a narrow exception to the exclusionary rule when police officers follow

the warrant process contemplated by the Fourth Amendment and this Court's cases. In this case, no judicial procedures, or even independent police judgment, were invoked as a legal basis for respondent's arrest.

In addition to sliding over the lessons taught by *Leon*, petitioner's arguments understate the precedential force and relevance of *Whiteley v. Warden*, 401 U.S. 560 (1971), and *United States v. Hensley*, 469 U.S. 221 (1985). Under the holdings of those cases, law enforcement officers are permitted to rely on their "fellow officers" or other institutional procedures to make arrests and detentions, even when they themselves lack probable cause or reasonable suspicion for their actions. But the collective knowledge rule works both ways. Where an officer makes an arrest in good faith reliance on a computer report or radio bulletin that turns out to be incorrect, the stop is illegal and evidence seized pursuant to that stop is inadmissible. As Justice O'Connor explained when she wrote for the Court in *Hensley* -- a case decided *subsequent* to *Leon* -- "when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who *issued* the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance." *Hensley*, 469 U.S. at 231. At the time of respondent's arrest, the institutional actor responsible for instigating that arrest -- the police computerized information system -- had no legal basis for the arrest. In other words, respondent's arrest "stands on no firmer ground than if there had been no warrant at all." *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971).

Petitioner and its supporting *amici* argue that the computer error was not the fault of police personnel, but of court staff. The result in this case should not depend on which agency was the source of the erroneous computer information. Invalid

and outdated information on open arrest warrants can come from various governmental sources. The position urged by petitioner suggests that governmental actors who disseminate to and receive data from police computers are not important players in the conduct at issue here. This argument ignores the reality of how computerized information on open arrest warrants is utilized by the government to effectuate arrests. State agencies and law enforcement personnel work hand-in-hand in an interconnected system. The careless record-keeping revealed below is just the type of government conduct that can be deterred by the exclusionary rule.

The arguments of petitioner also hint that the occurrence of erroneous computer reports is a rare phenomenon that is irrelevant to the issues raised in this case. In this regard, the Court should consider that a Federal Bureau of Investigation study of the country's computerized criminal information systems revealed that "[a]t least 12,000 invalid or inaccurate reports on suspects wanted for arrest are transmitted each day to Federal, state and local law-enforcement agencies."[2] This evidence and other empirical studies indicate there is an absence of careful monitoring of state and local computerized criminal information systems.[3] The existence of inaccurate information in police computers throughout the nation does not serve the interests of the law enforcement community and threatens the constitutional rights of thousands, if not millions, of ordinary citizens. Members of this Court have acknowledged that the scope and breadth of unconstitutional behavior is an important factor in deciding whether the exclusionary rule should be applied in a particular context. *See Illinois v. Krull*, 480 U.S. at 365 (O'Connor, J., dissenting) (noting an important distinction between an invalid search

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[2]David Burnham, *F.B.I. Says 12,000 Faulty Reports on Suspects are Issued Each Day*, N.Y. Times, Aug. 25, 1985, at 1.

[3]We will discuss some of the empirical studies below.

warrant that targets only one person and a legislature's illegal authorization of searches that affect the public). Empirical studies of computer systems and civil lawsuits brought by those who have been wrongly arrested show that the existence of inaccurate warrant reports in police computer systems "[c]ertainly . . . poses a greater threat to liberty," *id.*, than the police conduct at issue in *Leon*.

ARGUMENT

I. THE EXCLUSIONARY RULE APPLIES TO EVIDENCE DISCOVERED INCIDENT TO AN ARREST THAT IS BASED UPON AN ERRONEOUS POLICE COMPUTER REPORT THAT A MOTORIST IS WANTED FOR AN OPEN MISDEMEANOR WARRANT

When police officers obtain evidence in violation of the Fourth Amendment, the exclusionary rule normally precludes the use of that evidence in a criminal prosecution against the victim of the illegal search and seizure. *See Illinois v. Krull*, 480 U.S. 340, 347 (1987). The rule is designed "'to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.'" *Krull*, 480 U.S. at 347, quoting *United States v. Calandra*, 414 U.S. 338, 347 (1974). As such, it is "a necessary cost of preserving overriding constitutional values." *James v. Illinois*, 493 U.S. 307, 311 (1990).

Whether the exclusionary rule will be applied in a particular case is determined by examining whether the rule's deterrent effect will be promoted, while weighing the costs of depriving a fact-finder of evidence obtained from illegal police conduct. *Krull*, 480 U.S. at 347; *Leon*, 468 U.S. at 906-07. When addressing this final point, foremost in this Court's analysis is the purpose of the rule -- to encourage "the law

enforcement profession as a whole to conduct themselves in accord with the Fourth Amendment." *Leon*, 468 U.S. at 919, n.20; *id.* at 918 ("If exclusion of evidence obtained pursuant to a subsequently invalidated warrant is to have any deterrent effect, therefore, it must alter the behavior of individual law enforcement officers or the policies of their departments"). As Justice Stevens has succinctly described: "The justification for the exclusion of evidence obtained by improper methods is to motivate the law enforcement profession as a whole -- not the aberrant individual officer -- to adopt and enforce regular procedures that will avoid the future invasion of the citizen's constitutional rights." *Dunaway v. New York*, 442 U.S. 200, 221 (1979)(concurring opinion).

A. *Leon* Reflected The Court's Longstanding Interest In Promoting Compliance With The Warrant Process

Properly understood, *Leon* represents only a slight modification of the exclusionary rule to allow the admission of evidence obtained in violation of the Fourth Amendment under narrow circumstances. Specifically, *Leon* holds that when an officer has acted in objective reliance on a search warrant issued by a neutral and detached magistrate, evidence secured pursuant to the warrant is admissible in the prosecution's case-in-chief, even if it is later determined that the warrant was issued without probable cause.[4]

As Justice O'Connor has observed, *Leon* "relied explicitly on the tradition of judicial independence" and its importance to the Fourth Amendment. *Krull*, 480 U.S. at 365 (dissenting opinion). That tradition predates the *Leon* ruling. In 1932, for example, the Court explained that a judge was the

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[4]The Court noted at least four exceptions that would justify exclusion of illegally obtained evidence even where a seemingly valid warrant had been secured by the police. *Leon*, 468 U.S. at 923.

constitutionally preferred arbiter of whether probable cause exists to support a search. The "informed and deliberate determination of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests." *United States v. Lefkowitz*, 285 U.S. 452, 464 (1932). Rather than rely on the judgment or discretion of the officer in the field, the Fourth Amendment contemplates a process where law enforcement officers present evidence to a neutral and detached judicial officer to decide whether the government has probable cause for a search, unless exigent circumstances preclude such a process. *Johnson v. United States*, 333 U.S. 10, 13-14 (1948).[5]

The important role of the magistrate's determination of probable cause was again emphasized in *United States v. Ventresca*, 380 U.S. 102 (1965), and *Spinelli v. United States*, 393 U.S. 410 (1968). In *Ventresca*, the Court explained that a doubtful or marginal probable cause determination will be sustained where it is the result of a process where an officer has sought a magistrate's approval for a search. Similarly, in *Spinelli*, while articulating the standards that police affidavits must satisfy, the Court expressly noted that its ruling marked no retreat from the principle that a magistrate's "determination of probable cause should be paid great deference by reviewing

[5]*See also McDonald v. United States*, 335 U.S. 451, 455-56 (1948) ("The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals").

courts." *Spinelli*, 393 U.S. at 419. Such deference is appropriate not because magistrates are infallible, but because the Court long ago concluded that the process of obtaining a warrant "provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer 'engaged in the often competitive enterprise of ferreting out crime.'" *United States v. Chadwick*, 433 U.S. 1, 9 (1977), quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948).

More recently, *Illinois v. Gates*, 462 U.S. 213 (1983), reiterated that a magistrate's probable cause determination should not be disturbed unless it can be said that there was not a substantial basis supporting the decision. Because reasonable persons often disagree over whether a particular warrant application establishes probable cause, *Gates*, like the cases before it, made plain that a magistrate's probable cause determination should be viewed as an informed assessment of the allegations presented by the officer.

The reasoning of *Gates* (and the cases noted above) encourages police officers to utilize the warrant process.[6] It is common knowledge that many officers prefer to bypass the warrant process.[7] When officers utilize the warrant process, however, they provide a written record, *before the intrusion*, of their allegations that facilitates and makes more reliable subsequent review by a court. This process, moreover, discourages police perjury and prevents after-the-fact hindsight

[6]*Cf. Malley v. Briggs*, 475 U.S. 335, 353 (1986)(Powell, J., concurring in part and dissenting in part)("The police, where they have reason to believe probable cause exists, should be encouraged to submit affidavits to judicial officers")(footnote omitted).

[7]*See* Richard Van Duizend, L. Paul Sutton & Charlotte A. Carter, *THE SEARCH WARRANT PROCESS: PRECONCEPTIONS, PERCEPTIONS, AND PRACTICES* 66 (1983).

from influencing the resolution of the issue of probable cause. *Gates* recognized that a grudging review of warrants might lead some officers to resort "to warrantless searches, with the hope of relying on consent or some other exception to the Warrant Clause that might develop at the time of the search." *Gates*, 462 U.S. at 236. Also, when officers invoke the judicial process to obtain warrants, the public is notified of the lawfulness of the officer's behavior. As Chief Justice Burger observed, a warrant informs "the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search." *United States v. Chadwick*, 433 U.S. 1, 9 (1977); *cf. Camara v. Municipal Court*, 387 U.S. 523, 532 (1967)(a system of warrantless administrative housing inspections undermines an occupant's ability "of knowing whether the inspector himself is acting under proper authorization").

As noted, *Leon* relied upon the "tradition of judicial independence," *Krull*, 480 U.S. at 365 (O'Connor, J., dissenting), that had been reaffirmed in *Gates* to carve out an exception to the normal rule of exclusion of unlawfully obtained evidence. The *Leon* Court was comfortable in permitting the use of illegally obtained evidence under the particular circumstances presented to it. Those circumstances involved police officers utilizing the warrant process -- the very same process that for many decades the Court had been urging the police to invoke. Where the warrant process had been used by the police, this Court found that suppression of evidence later determined to be unlawfully obtained was inconsistent with the deterrent purpose of the exclusionary rule.

Like *Gates*, *Leon* rested upon this Court's faith in the warrant process and continued belief that police officers should be encouraged to obtain warrants before undertaking searches and seizures. The Court found "no evidence suggesting that judges and magistrates are inclined to ignore

or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Leon*, 468 U.S. at 916 (footnote omitted). Accordingly, the Court held that when an officer invokes the warrant process and relies on the magistrate's judgment for assessing whether probable cause exists, an exception to the normal rule of exclusion exists to sanction the officer's reliance on the constitutionally preferred mode of process.[8]

A clear message emerges from the Court's cases: Warrants should be issued where police officers provide sufficient evidence of criminality, and law enforcement agencies that follow this process will not have evidence suppressed where it is subsequently determined that a warrant was not supported by probable cause or was invalid on technical grounds. Simply put, the warrant process is the constitutionally preferred mode for intruding upon an individual's privacy and personal security, and the exclusionary rule does not apply in cases where a "reasonably well-trained officer," *Leon*, 468 U.S. at 922, n.23, has complied with this process.[9]

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[8]*Illinois v. Krull*, 480 U.S. 340 (1987), is not inconsistent with this tradition. *Krull* ruled that the exclusionary rule would not apply where an officer acts in reasonable reliance on a statutory authorization for a search which is subsequently declared invalid by the judiciary. Like *Leon*, *Krull* encourages police officers to comply with rules and procedures established by high-ranking officials who are not part of the "law enforcement" team. *Krull* recognizes that police officers should not be responsible for assessing the constitutionality of statutes. A statute informs the police of the scope and limits of their authority; the discretion of the officer is restrained by legislative guidelines.

[9]These rulings promote Fourth Amendment values by forcing police officers "to stop, think, write down their evidence, and submit it to someone else for approval. Aside from the obvious salutary effect that those requirements have in curbing police impetuosity, they also make it

(continued...)

B. The Law Enforcement Conduct In The Instant Case Does Not Satisfy The Dictates That Were Established In *Leon*

It is obvious that the law enforcement conduct in the present case is a far cry from the procedures encouraged in *Leon* and *Sheppard*. Respondent's illegal arrest was based neither on a judicial determination of probable cause, nor upon Officer Sargent's independent judgment that probable cause existed for the arrest.[10] *See United States v. Watson*, 423 U.S. 411 (1976)(law enforcement officer may, consistent with the Fourth Amendment, make warrantless arrest where probable cause exists that arrestee has committed an offense). The sole basis for respondent's unlawful arrest was the erroneous police computer message. An illegal arrest based on a stale and invalid computer communication should not be analogized to the judicial process at issue in *Leon*. When respondent's automobile was stopped for a traffic violation, there was no existing warrant for his arrest. When Officer Sargent arrested respondent, he was not relying on a facially valid judicial order that would be subsequently declared invalid. Nor was this arrest based upon the officer's on-the-scene, independent assessment of probable cause. In sum, there was no legal basis for the arrest.

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[9](...continued)
more difficult for the police to fabricate probable cause on the basis of what was found instead of what was actually known in advance." Craig M. Bradley, *The "Good Faith Exception" Cases: Reasonable Exercise in Futility*, 60 Ind. L.J. 287, 292 (1985).

[10]The arresting officer testified that he had no knowledge about the facts or basis for the outstanding misdemeanor warrant: "Q. At that time [when respondent was about to be placed under arrest], did you know what that misdemeanor warrant was for? A. No." J.A. 19.

C. *Leon* Did Not Adopt A Comprehensive "Good Faith" Exception To The Exclusionary Rule

The petitioner and other *amici* emphasize that the arresting officer was not responsible for the computer error and had no knowledge that the warrant had been quashed. They assert that the officer relied in "good faith" upon the computer information and acted in an objectively reasonable manner. The problem with these arguments is that they ignore the lessons taught by *Leon*.

Leon did not endorse a universal "good faith" exception to the normal rule of exclusion. In fact, the "good faith" exception is a misnomer; the narrow exception approved in *Leon* is not applicable whenever an officer acts in "good faith" or is without fault for the infringement of someone's Fourth Amendment rights.[11] To the contrary, the Court cautioned that its opinion should not be read to suggest "that exclusion is always inappropriate in cases where an officer has obtained a warrant and abided by its terms." *Leon*, 468 U.S. at 922. For example, the Court explained that suppression remains an appropriate remedy where, despite the executing or arresting officer's "good faith," the warrant process is tainted by police misconduct,[12] impaired by an inherent malfunction,[13] or

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[11]*See* David Clark Esseks, Note, *Errors in Good Faith: The Leon Exception Six Years Later*, 89 U.Mich. L.Rev. 625, 653 (1990)(commentators on the exclusionary rule often discuss "the propriety of a 'good faith' exception, not always distinguishing between the reasonable reliance type of exception eventually adopted in *Leon* and one that would also excuse an officer's mistaken subjective good faith, and not always confining the exception they advocated to the search warrant context")(footnote omitted).

[12]*Leon*, 468 U.S. at 923 (suppression is proper remedy if magistrate "was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth").

[13]*Id.* (suppression proper where magistrate "wholly abandoned his judicial
(continued...)

produces a judicial order that is inconsistent with the commands of the Constitution.[14]

Leon also made plain that exclusion is still proper when an officer in "good faith" and without fault relies on another officer's or department's decision to procure a search or arrest warrant. *See Leon*, 468 U.S. at 923, n.24. *Leon* leaves no doubt that the subjective good faith or lack of fault of the arresting officer is irrelevant for deciding whether the exclusionary rule will be applied in a contested case. *Leon*, 468 U.S. at 919, n.20 ("We emphasize that the standard of reasonableness we adopt is an objective one").

The petitioner's arguments misunderstand the broad purposes of the exclusionary rule and the narrow exception that *Leon* adopted. Application of the rule does not turn on the "good faith" of the officer who acts at the end of the police chain-of-command. Evidence seized by an officer pursuant to a warrant that has been obtained by another officer using an affidavit containing inadequate information does not qualify for admission under this Court's cases, even though the officer executing the warrant did nothing wrong and acted in "good faith" reliance on the warrant. *See Leon*, 468 U.S. at 923, n.24 ("Nothing in our opinion suggests, for example, that an officer could obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search. *See Whiteley v. Warden*, 401 U.S. 560, 568 (1971)").

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[13](...continued)
role" in overseeing warrant process), citing *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979).

[14]*Leon*, 468 U.S. at 923 (suppression appropriate when warrant issued is "'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,'" or is facially deficient that "executing officers cannot reasonably presume it to be valid")(citation omitted).

Rather than turning on the good faith or honest belief of an officer who acts pursuant to another officer's request or institutional command, application of the exclusionary rule depends upon a more nuanced inquiry. The rule is aimed at an audience broader than the patrol officer who acts without fault, or honestly believes his actions comport with the Fourth Amendment. As Justice White explained in *Leon*, "'[g]rounding the modification in objective reasonableness, however, retains the value of the exclusionary rule as an incentive for the *law enforcement profession as a whole* to conduct themselves in accord with the Fourth Amendment.'" *Leon*, 468 U.S. at 919-20, n.20 (emphasis added), quoting *Illinois v. Gates*, 462 U.S. 213, 261, n.15 (White, J., concurring in the judgment). Here, Officer Sargent's "good faith" reliance on the computer cannot excuse the illegal arrest or justify admission of the evidence obtained incident to that arrest.

II. THIS COURT'S PRECEDENTS ESTABLISH THAT EVIDENCE OBTAINED INCIDENT TO AN ILLEGAL ARREST CANNOT BE INSULATED FROM CHALLENGE DUE TO THE GOOD FAITH OF THE ARRESTING OFFICER

Prior precedents of the Court have anticipated and rejected the same arguments pressed by petitioner and the dissent of Justice Martone of the Arizona Supreme Court. Petitioner emphasizes that the arresting officer "had no knowledge, and cannot properly be charged with knowledge, that the warrant had been quashed." Brief of Petitioner at 9. In a similar vein, the dissent below argued the arresting "police department was not responsible for the error." *Evans*, 866 P.2d at 873. Justice Martone wrote that: "The officer arrested [respondent] in good faith on a facially valid warrant." *Id.*

These arguments ignore the holdings of *Whiteley v. Warden*, 401 U.S. 560 (1971) and *United States v. Hensley*, 469 U.S. 221 (1985). In *Whiteley*, a police officer, relying in good faith on a radio bulletin issued by another department, arrested Whiteley and a companion and discovered incriminating evidence incident to the arrest. As in the instant case, the arresting police department in *Whiteley* "was not responsible" for the error that resulted in the magistrate's issuance of an invalid arrest warrant. In *Whiteley*, as in this case, the arresting officer in good faith relied upon a presumptively valid institutional procedure, the police bulletin, as the legal basis for the arrest. Notwithstanding this type of "good faith" by the arresting officer, this Court had little trouble concluding that "an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest," and the evidence obtained from that arrest "should have been excluded from [the] trial." *Whiteley*, 401 U.S. at 568-69.[15]

The dissent below of Justice Martone also stated that "[w]hen the computer shows an outstanding arrest warrant, the officer is expected to make an arrest." *Evans*, 866 P.2d at 873. Such an officer, according to Justice Martone, "is in the same position as one who holds an arrest warrant in his hand. It makes no difference whether, after issuance, a warrant is quashed or otherwise invalid." *Id.* All of this was true in *Whiteley* too, but the Court did not hesitate to find that the Fourth Amendment had been violated and that evidence found pursuant to such an illegal arrest should not have been admitted at Whiteley's trial.

The officer in *Whiteley* also was expected to make an arrest when he came upon the automobile and individuals

[15]The result in *Whiteley* has never been questioned by the Court, and was cited with approval in *Leon*. *See Leon*, 468 U.S. at 923, n.24.

described in the radio bulletin. At the time that he stopped Whiteley, that officer occupied the same position as one who holds an arrest warrant. But, contrary to Justice Martone's argument, *it does make a difference* under this Court's cases whether, after issuance, a warrant is quashed or otherwise invalid. This is the lesson that *Whiteley* and *United States v. Hensley*, 469 U.S. 221 (1985), teach. Officers are free to rely on institutional procedures to make arrests and detentions, even though they themselves do not possess probable cause or reasonable suspicion for the stop. But the collective knowledge rule works both ways. Where an officer makes an arrest or a detention in good faith reliance on a computer report or radio bulletin that turns out to be incorrect, the stop is illegal and evidence seized pursuant to that stop is inadmissible.

The reasoning and result in *Leon* cast no doubt on the continuing validity of *Whiteley*. As noted, *Leon* approvingly cited *Whiteley*. *See Leon*, 468 U.S. at 923, n.24. Moreover, in a case decided subsequent to *Leon*, this Court reaffirmed its commitment to *Whiteley*. In *Hensley*, Justice O'Connor's majority opinion invoked the reasoning of *Whiteley* to explain that "when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who *issued* the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance." 469 U.S. at 231.[16] Because there were no legal grounds for the open misdemeanor warrant in the computer, respondent's arrest "stands on no firmer ground than

[16]The issue in *Hensley* and *Whiteley* is not whether the arresting officer himself possessed probable cause, but the degree and accuracy of the information possessed by law enforcement as a whole. So too in the instant case, the real issue is the validity of the computer information utilized by Officer Sargent, not who generated it.

if there had been no warrant at all." *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971).[17]

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[17]Combining dicta from *Whiteley* and *Hensley*, and statements from the Court's qualified immunity cases, the Brief *Amicus Curiae* of the Washington Legal Foundation at 22-26 contends that the exclusionary rule is inapplicable where officers would not be held liable for civil damages as a result of their unconstitutional actions. Although Justice White once suggested this same model for deciding exclusionary rule cases, *see Stone v. Powell*, 428 U.S. 465, 541-42 (1976)(White, J., dissenting), there are sound reasons why the Court has rejected this proposal. Indeed, Justice White, the author of *Leon*, later recognized that the analogy between the qualified immunity cases and proper application of the exclusionary rule is not perfect. *Leon*, 468 U.S. at 922, n.23.

First, when a plaintiff brings a civil lawsuit against an officer for conduct that violated the Constitution, the plaintiff is seeking to vindicate a personal right, as well to deter future unconstitutional behavior. *See Owen v. City of Independence*, 445 U.S. 622, 651 (1980). In contrast, the remedy of exclusion in a criminal case is not a "personal constitutional right" of a defendant. *Leon*, 468 U.S. at 906, quoting *Calandra*, 414 U.S. at 348.

Furthermore, under the Court's qualified immunity cases, an officer who acts in good faith but mistakenly believes that his conduct comports with the Fourth Amendment will not be held liable unless his actions violated clearly established law. *See Anderson v. Creighton*, 483 U.S. 635, 641 (1987); *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986). Such a rule protects police officers who act in a reasonable manner. *See* Wayne R. LaFave, *The Fourth Amendment in an Imperfect World: On Drawing "Bright Lines" and "Good Faith"*, 43 U. Pitt. L.Rev. 307, 345 (1982). But the rationale underlying qualified immunity for an individual officer who acts in mistaken "good faith" has no application in an exclusionary rule context because the focus of the exclusionary rule is on "the law enforcement profession as a whole." *Leon*, 468 U.S. at 919, n.20, quoting *Gates*, 462 U.S. at 261, n.15 (White, J., concurring in judgment).

Contrary to the assertions of the Washington Legal Foundation, the lack of fault of Officer Sargent is irrelevant to this case. The "exclusionary rule's purpose is not only, or even primarily, to deter the individual officer involved in the instant case." *Gates*, 462 U.S. at 261, n.15 (White, J., concurring in judgment). The rule is not designed to punish "the aberrant (continued...)

III. THE RESOLUTION OF THIS CASE SHOULD NOT DEPEND ON THE SOURCE OF THE COMPUTER ERROR

The result in this case should not turn on which agency was responsible for the error retaining respondent's name in the police computer system. Inaccurate computer data on outstanding arrest warrants come from various sources. Errors can be the responsibility of a local police department, a state police agency, an administrative agency not responsible for law enforcement activities, a state motor vehicle department, a state parole office, or court staff. If petitioner's position were accepted, lower courts would have to decide which governmental agency was source of the error. What if the mistake was the fault of personnel from the National Crime Information Center (NCIC) or one of the parallel state systems? Are these governmental actors considered "law enforcement" personnel such that their errors would lead to application of the exclusionary rule? Or, should their actions, albeit widely used by law enforcement officers throughout the

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[17](...continued)
individual officer," *Dunaway v. New York*, 442 U.S. 200, 221 (1979) (Stevens, J., concurring), but to deter, educate and motivate "the law enforcement profession as a whole to conduct themselves in accord with the Fourth Amendment." *Leon*, 468 U.S. at 919 n.20, quoting *Gates*, 462 U.S. at 261, n.15 (White, J., concurring in judgment). Failure to apply the exclusionary rule here would send an unfortunate message to those who disseminate to and receive information from police computers that there is no need to be careful in the handling and monitoring of data on outstanding arrest warrants.

As Professor Yale Kamisar has noted, a better analogy between "constitutional tort" law and the law governing the exclusionary rule is found in "a civil action against the municipality itself." *See* Yale Kamisar, *Gates, "Probable Cause," "Good Faith," and Beyond*, 69 Iowa L.Rev. 551, 594-95 (1984)(noting that *Owen v. City of Independence*, 445 U.S. 622 (1980), ruled that a governmental entity may not assert the good faith of its officers as a defense to liability in a constitutional tort case).

country, nonetheless be deemed administrative or magisterial that the exclusionary rule would not apply where their errors lead to illegal arrests and searches? Petitioner's position would also have the unwelcomed effect of pitting different governmental agencies against each other where an arrest is the result of a computer error. The rule proposed by the petitioner and its *amici* will only enlarge the number of issues contested at suppression hearings.

Moreover, the facile argument that application of the exclusionary rule turns on whether the police are responsible for the mistake ignores the reality of how computerized information on open arrest warrants is utilized by governmental actors. The NCIC and parallel state systems transmit and store information on wanted persons from many different state and federal agencies. Over 60,000 agencies use the NCIC system to check for open arrest warrants; many other checks are conducted on state systems. When a state motor vehicles department places a person's name in the system for driving with a suspended license, or when court personnel report an open warrant for failure to appear at a traffic hearing, they do so in order to enlist the services of law enforcement officers. In other words, state agencies and the police work together in an interconnected system. As one judge has cogently noted:

> It is artificial to break the agencies apart when viewing the consequences to the motoring public of errors of recordkeeping. The state should not benefit from compartmentalizing its responsibility to the public into separate but obviously interdependent agencies without some rationale to support this result. From the standpoint of fairness, it makes no difference that a motorist is victimized by misfunctions in recordkeeping at [a state motor vehicle department] rather than at the Department of Public Safety.[18]

This Court Should Not Resolve The Factual Issue Concerning The Source Of The Computer Error In This Case

Petitioner argues that "[t]he 'critical mistake' that caused the Fourth Amendment violation in this case was made by justice court personnel who failed to have the quashed warrant removed from the computer system." Brief of Petitioner at 9.[19] We agree with the court below that the source of the computer error is immaterial to a proper resolution of this case. To the extent, however, that this Court believes otherwise, petitioner's claim that the source of the computer error was caused by court personnel is not supported by the record. The Arizona Supreme Court chose not to resolve this factual issue.[20] This Court is not the proper forum for deciding disputed factual issues not resolved below. In past cases, this Court has been reluctant to engage in the type of fact-finding mission that the petitioner now urges. *Michigan v. Long*, 463 U.S. 1032, 1053 (1983); *Combs v. United States*,

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[18]*State v. Lanoue*, 587 A.2d 405, 408 (Vt. 1991)(Morse, J., dissenting).

[19]Petitioner's supporting *amici* make similar assertions. *See* Brief *Amicus Curiae* of Washington Legal Foundation at 4, 7, 17, 21 & 22.

[20]Twice in its opinion, the Arizona Supreme Court emphasized that it was not deciding which agency personnel were responsible for the computer error. *See Evans*, 866 P.2d at 871: "We are unable to follow the lead of the court of appeals in dismissing conflicting inferences raised by evidence on the issue of whether fault rested with the justice court, the police, or both. Testimony at the suppression hearing failed to clearly establish whether a telephone call from the court to the police, advising that the warrant had been quashed, was made but not entered in the record, or was never made at all." *Id.* "Whether the erroneous computer record was the fault of police or justice court personnel should be of no consequence even though, as we have noted, evidence on this point was by no means as clear as the state now suggests." *Id.*

408 U.S. 224, 228 (1972)(*per curiam*). Petitioner has offered no compelling reason for the Court to depart from this tradition.

IV. THE VOLUME OF INACCURATE AND OUTDATED INFORMATION IN LAW ENFORCEMENT COMPUTER SYSTEMS IS A FACTOR IN ASSESSING WHETHER THE EXCLUSIONARY RULE APPLIES TO THIS CASE

The arguments of petitioner suggest that inaccurate and stale information in police computers is a rare phenomenon that is unimportant to the questions raised in this case. Petitioner baldly asserts that there is "no evidence suggesting that employees of judges and magistrates are . . . inclined to engage in" conduct that jeopardizes Fourth Amendment rights. Brief of Petitioner at 11. This claim flies in the face of empirical studies and other evidence. For example, a 1985 Federal Bureau of Investigation study found that "[a]t least 12,000 invalid or inaccurate reports on suspects wanted for arrest are transmitted each day to Federal, state and local law-enforcement agencies."[21] Although the FBI study is several years old, one scholar found that the "FBI research *underestimates* the problem" of inaccurate and outdated data on outstanding arrest warrants.[22] While the FBI study found a 6 percent error rate in warrants, other empirical research "of a representative sample of warrants found the error rate to be

[21]David Burnham, *F.B.I. Says 12,000 Faulty Reports on Suspects Are Issued Each Day*, N.Y. Times, Aug. 25, 1985, at 1.

[22]Kenneth C. Laudon, *DOSSIER SOCIETY: VALUE CHOICES IN THE DESIGN OF NATIONAL INFORMATION SYSTEMS* 145 (1986) (emphasis added).

11 percent."[23] This research, conducted by the nation's leading scholar on computerized criminal history records, made the following observation about the NCIC: Over "14,000 persons are at risk of being falsely detained and perhaps arrested, because of invalid warrants in the system."[24]

The quality of information in local systems tends to vary from state to state. But if the information in a local system is inaccurate, often it is impossible to prevent this faulty data from being transmitted to other law enforcement agencies. Because the NCIC accepts data sent by state and local agencies, the "national system is only as accurate as the local and state law enforcement records that constitute it."[25] More particularly, one researcher found that mistakes in the nation's law enforcement computers regarding open arrest warrants have violated the constitutional rights of many innocent

[23]*Id.*

[24]Laudon, *supra* note 22 at 144. Laudon's research also revealed: (1) "8,000 persons are at risk of being detained, and perhaps arrested, but subsequently neither extradited nor prosecuted because of the non-serious nature of their indicated offense," and (2) "19,000 persons whose outstanding warrants are valid but more than five years old are at risk of being detained and perhaps arrested, but neither prosecuted nor extradited due to the age of the outstanding warrant." *Id.* at 144-45.

[25]Diana R. Gordon, *THE JUSTICE JUGGERNAUT* 72 (1990). Another researcher wrote that

> a Midwest prosecuting attorney conducted a review of all arrest warrants from his county listed on NCIC. He looked at cases that were between one and twenty-three years old. Taking into account the availability of witnesses and new evidence that had come to light, the prosecutor concluded that 73 percent of the cases he examined were no longer provable -- and many weren't even open anymore. Yet NCIC still listed ongoing arrest warrants for the cases.

Jeffrey Rothfeder, *PRIVACY FOR SALE* 132 (1992).

persons:

> Plaintiffs in Louisiana, California, New York, and Massachusetts, to name a few, have sued police for wrongful detention of up to four months. The victim is typically black or Hispanic, has a relatively common name, and is picked up in a traffic offense or border check on the warrant of someone charged with a serious offense. Sometimes the problem is the failure to remove a warrant that was in error in the first place; a Boston plaintiff was jailed because the police had not corrected the report of a stolen car that had, in fact, been borrowed by a relative . . . . Law enforcement officials are the first to admit that once these errors are made they are hard to correct. When Shirley Jones, a New Orleans woman who was taken from her home and small children and held overnight on a "wrong warrant" for welfare fraud, was finally released, a sheriff's deputy told her to change her name or she would face a repeat of the incident.[26]

These reports indicate an absence of careful monitoring of state and local computerized criminal information systems.[27] More importantly, this type of negligent institutional record-keeping is precisely the sort of conduct that can be deterred by

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[26]Gordon, *supra* note 25 at 73-74 (footnotes omitted).

[27]The FBI study noted earlier found that "[i]n a 10-day period in March [1985], 13.2 percent of a sample of reports placed in the F.B.I. system by Alabama agencies were invalid because the underlying warrants had been dismissed or otherwise acted upon. Another 8.7 percent had incorrect information about the height, weight and date of birth of the wanted person. Such information is essential to help police avoid arresting the wrong person." Burnham, *supra* note 21.

the exclusionary rule. A contrary holding would perhaps encourage careless behavior by officials whose work is interdependent with police officers who effectuate arrests. As Professor LaFave has observed: "To apply the exclusionary rule when an individual officer oversteps his bounds but not when the violation of the Fourth Amendment is caused by *systemic defects* would be to turn the Fourth Amendment on its head." 1 Wayne R. LaFave, *SEARCH AND SEIZURE* §1.2(d), at 41 (2d ed. 1987)(emphasis added)(footnote omitted).

Erroneous and outdated information in police computers does not promote effective law enforcement and threatens the constitutional rights of thousands, if not millions, of ordinary citizens. Members of this Court have acknowledged that the scope and breadth of unconstitutional behavior is a material circumstance in deciding whether the exclusionary rule should be applied in a particular context. *See Illinois v. Krull*, 480 U.S. at 365 (O'Connor, J., dissenting)(noting an important distinction between an invalid search warrant that targets only one person and a legislature's illegal authorization of searches that affect the public). Although researchers concede that there are fewer errors in computer systems than in manual records, the mistakes that do exist "have more impact now because they travel farther, are seen by more people, are copied and recopied, and have more uses."[28]

Accordingly, inaccurate and outdated arrest warrants in police computers jeopardize Fourth Amendment interests in a manner not at issue in *Leon*. As one scholar of the subject has observed:

> Warrant files at state and federal levels are universally exempted from any statutory controls. This affords law enforcement officers the

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[28]Gordon, *supra* note 25 at 72.

> opportunity of detaining persons for a period ranging from a few seconds up to several hours to confirm warrants. Thus, it is reasonable to believe that the unregulated proliferation of wanted person files at both state and federal levels may lead to a distortion of the police role in American society and alter the relationship between police and citizenry. Ultimately, this may threaten the enjoyment of constitutional protection by ordinary citizens guilty of nothing more than traffic violations or, in some cases, guilty of nothing more than riding in an automobile on the street.[29]

Put simply, the existence of inaccurate warrant reports in police computer systems imperils the constitutional interests of many persons, and therefore, "[c]ertainly . . . poses a greater threat to liberty," *Krull*, 480 U.S. at 365 (O'Connor, J., dissenting), than the constitutional error at issue in *Leon* which only targeted selected individuals.

[29]Laudon, *supra* note 22 at 243.

CONCLUSION

For the reasons stated above, the judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

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(10)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

No. 93-1660

STATE OF ARIZONA, *Petitioner*

v.

ISAAC EVANS, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether an exception to the exclusionary rule should be created for evidence seized following an arrest based upon a withdrawn warrant.

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This amicus brief is filed pursuant to Rule 37 of the United States Supreme Court. Both petitioner and respondent have granted amicus consent to file this brief, and the letters of consent have been filed with the Clerk of the Court.

INTEREST OF AMICUS

The National Association of Criminal Defense Lawyers (NACDL) is a non-profit corporation which currently has a membership of more than 8,000 attorneys and

28,000 affiliate members in 50 states. The American Bar Association recognizes the NACDL as an affiliate organization and awards it full representation in its House of Delegates.

The NACDL was founded over 25 years ago to promote study and research in the field of criminal defense law; to disseminate and advance knowledge of the law in the area of criminal practice; and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases. Among the NACDL's stated objectives is the proper administration of criminal justice. Thus, the members of the NACDL have a vital interest in insuring that the integrity of the criminal justice system is protected. This includes an overriding interest in the promulgation of rules of procedure that insure the constitutional rights of citizens accused of crime.

STATEMENT OF THE CASE

A. The Unlawful Arrest and Warrantless Search

On January 5, 1991, Isaac Evans was stopped by Phoenix police officers for driving the wrong way on a one-way street in front of the main police station. (J.A. at 17.) Upon being stopped and asked for his driver's license, Mr. Evans responded that his license had been suspended. (Id. at 17-18.) The officer then ran Mr. Evans' name on a computer in his patrol car, and was informed that there was an outstanding misdemeanor arrest warrant for him. (Id. at 19.)

solely because of this outstanding misdemeanor arrest warrant, and for no other reason, the officer placed Mr. Evans under arrest. (Id. at 23-24.)

During the process of handcuffing Mr. Evans, a handrolled cigarette fell from one of his hands. (Id. at 20.) The officer seized the cigarette and determined that it was marihuana. (Id. at 21.) The automobile was searched and additional marihuana was found. (Id. at 22.) The arresting officer testified that the justification for the search of the vehicle was that it was incident to the arrest. (Id.) There is no testimony that the officers feared for their safety or would have searched Mr. Evans or the vehicle other than as an incident to the arrest.

B. The Suppression Hearing

After being charged with possession of marihuana, Mr. Evans filed a motion to suppress on the basis that his arrest was violative of the Fourth Amendment. (J.A. at 2.) His basic contention was that the warrant which purported to authorize his arrest had been quashed prior to January 5, 1991. (Id. at 4.) The evidence at the suppression hearing showed that on December 12, 1990, Mr. Evans failed to appear in the East Phoenix Justice Court. (Id. at 28.) The next day a bench warrant was issued. (Id. at 29.) On December 19, 1990, Mr. Evans appeared in justice court and this warrant was quashed. (Id. at 29.)

The clerk of the justice court testified that the general procedure the clerks follow when quashing a warrant is to advise the jail or the warrant section that the warrant has been quashed, and then note on the file to whom the clerk provided this information. She said that Mr. Evans' file did not contain such a notation. (Id. at 29.) This indicated to her that the sheriff's office had not been notified the warrant was quashed, (Id. at 30.), although she admitted that she could not actually tell whether that was true, or whether someone made the call and merely forgot to note it. (Id. at 32.)

A clerk at the Operations Information Center of the sheriff's office testified as to the procedure they followed when they received a call from a court clerk advising them of a warrant recall. (Id. at 39-40.) She further testified that the list of recalled warrants they kept did not show that they received notification of a recalled warrant on Mr. Evans during the applicable time periods. (Id. at 41-43.) Her testimony was based on custom and practice, and she could not rule out the possibility that they received such a call, but failed to record it. (Id. at 43.)

The trial court granted Mr. Evans' motion to suppress the evidence seized pursuant to the unlawful arrest. The court did not find it necessary to make a definitive finding as to whether the justice court or the sheriff's office was at fault in failing to ensure that the warrant was removed from the sheriff's office computers. The court's reasoning was that in either event it was negligence on the part of the state, and the law required suppression. (Id. at 51-53.)

C. The Appellate Rulings

The Arizona Court of Appeals reversed the trial court's order granting the suppression motion. The court found that the purpose of the exclusionary rule was to deter unlawful police conduct. (Pet. App. at 32a.) The court apparently interpreted the word "police" in a literal fashion, since it held that the "exclusionary rule is not intended to deter justice court employees or Sheriff's Office employees who are not directly associated with the arresting officers or the arresting officers' police department." (Id. at 34a.) It is clear that the court felt the proper focus was on only the law enforcement agency executing the actual arrest, and that the collective knowledge of law enforcement should not be considered.

The Arizona Supreme Court reversed the court of appeals and reinstated the trial court's ruling suppressing the evidence seized pursuant to the unlawful arrest. The court noted that the hearing testimony did not clearly establish who was at fault for the failure to enter the warrant recall in the computer records, but went on to hold that the exclusionary rule should be applied even if the fault was that of the justice court clerk. (Id. at 5a, 8a.) The court found Leon distinguishable because it involved a search pursuant to a warrant, rather than a warrantless arrest and search, and also found the "good faith" analysis to be of little value under the facts of this case (Id. at 6a-7a.) The issue of whether the error was made by a court employee or a law enforcement employee was not deemed significant. (Id. at 8a-9a.) The court felt the important principle was that a citizen should not be subject to arrest based on a warrant that had been recalled, and that the exclusionary rule could serve as a valuable deterrent to governmental negligence in situations such as those reflected by the facts of this case. (Id. at 9a-11a.)

SUMMARY OF ARGUMENT

This Court has recognized only limited exceptions to the application of the exclusionary rule to unlawfully seized evidence. The exceptions created by the Court in Leon and Krull recognize distinct situations where a law enforcement officer has been directed to conduct a search by an independent judicial or law-making authority. The "good-faith" test of Leon was not meant to apply other than in carefully delineated situations. It cannot be used as a talisman to undermine the manner in which courts interpret the proper functioning of constitutional principles.

This Court's previous rulings do not support an additional exception to the exclusionary rule to permit the introduction of evidence seized pursuant to a warrantless search following an unlawful arrest. The right to conduct a warrantless search incident to a lawful arrest is itself an exception to the warrant requirement. Crafting a further exception to the exclusionary rule permitting the admission of evidence seized pursuant to an arrest effected without probable cause would be tantamount to letting the exceptions swallow the Fourth Amendment.

There is no reasoned distinction between "law enforcement" agencies and "civilian" agencies when it comes to applying the exclusionary rule in a situation such as that represented by Mr. Evans' case. The fact that a "non-law enforcement" clerk may have been responsible for the failure to withdraw the arrest warrant from the computerized data bank does not shield the police department's actions in conducting an unlawful arrest. This Court should not adopt a policy that will permit law enforcement to act as passive recipients and repositories of inaccurate data, let alone adopt a policy that provides a disincentive to ensure the accuracy of data relied upon by law enforcement to impinge upon the freedoms of the citizenry.

ARGUMENT

THE CONSTITUTIONAL PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE WILL BE UNDERMINED BY PERMITTING THE ADMISSION OF EVIDENCE SEIZED PURSUANT TO A WARRANTLESS SEARCH INCIDENT TO AN UNLAWFUL ARREST

This Court has consistently recognized the principle that the Fourth Amendment dictates that searches be conducted pursuant to warrant. The few circumstances that justify a warrantless search are jealously and carefully prescribed. Coolidge v. New Hampshire, 408 U.S. 443, 454-455 (1971).[1] The recognition of this principle is important in framing the issue before the Court in this case, because it must be borne in mind that this case actually involves the deprivation of two rights. The first is the defendant's right to be free from an unlawful seizure of his person, and the second is the right to be free from an unreasonable search. There is no doubt that under the general facts presented by this case, the warrantless search of the defendant, independent of a valid arrest, was unconstitutional as totally lacking in probable cause and not fitting within any of the recognized

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[1] See, e.g., Chimel v. California, 395 U.S. 752 (1969)(search incident to valid arrest); Terry v. Ohio, 392 U.S. 1 (1968)(search pursuant to investigative stop); Chambers v. Maroney, 399 U.S. 42 (1970)(vehicle search based on probable cause); Colorado v. Bertine, 479 U.S. 367 (1987)(inventory search); Almeida-Sanchez v. United States, 413 U.S. 266 (1973)(border search); Warden v. Hayden, 387 U.S. 294 (1967)(exigent circumstances).

exceptions to the warrant requirement.[2] Thus, under settled constitutional doctrine, the invalidity of the defendant's arrest rendered the warrantless search in this case unconstitutional.

The State of Arizona takes the position that an officer's so-called "good faith" mistake as to the existence of an outstanding arrest warrant should serve as a substitute for both probable cause to arrest and a search warrant. The holdings of this Court do not support a result that would render nugatory both the seizure and search provisions of the Fourth Amendment.

A. The Exclusionary Rule Serves To Insure That Law Enforcement Will Only Interfere With The Rights Of The Citizenry Pursuant To Well-Defined And Structured Legal Precepts

This Court first acknowledged the necessity of the exclusionary rule in Weeks v. United States, 232 U.S. 383 (1914). In Wolf v. Colorado, 338 U.S. 25 (1949), the Court reaffirmed its belief in the exclusionary rule, but found that at that time the due process clause did not require extension of the exclusionary rule to the states. This view changed 12 years later in Mapp v. Ohio, 367 U.S. 643 (1961), where the Court overruled that portion of Wolf which declined to extend the exclusionary rule to the states, and held that such a result was constitutionally required. The Court's basic belief in the validity of the exclusionary rule has remained unchanged for

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[2] It is clear from reading the record of the suppression hearing that the officer did not feel threatened by the defendant in any way; nor did the officer give any impression that, in the absence of discovering the withdrawn warrant, he intended to conduct a search.

80 years. This Court has only modified the exclusionary rule, and permitted the admission of otherwise improperly seized evidence as part of the prosecution's case-in-chief, when the subject searches or seizures occurred within a well-established legal framework.

Only two basic situations have warranted exceptions to this Court's founded belief that the exclusionary rule is necessary to restrict the presentation of evidence during the prosecution's case-in-chief. One is the situation where the evidence is seized pursuant to a statute that is later declared unconstitutional. See Michigan v. DeFillippo, 443 U.S. 31 (1979); Illinois v. Krull, 480 U.S. 340 (1987). The other is where the evidence is seized pursuant to a search warrant that is later declared to be invalid. See United States v. Leon, 468 U.S. 897 (1984); Massachusetts v. Sheppard, 468 U.S. 981 (1984). In both types of cases, the directive to conduct a search has been authored by other than the law enforcement authorities. In the first situation, the legislature has directed that a search or seizure should be made and law enforcement is merely following that dictate. In the second situation, an independent magistrate has made the decision as to the propriety of the search. "In both Leon and Krull, the touchstone of the Court's decision was the police officer's objectively reasonable reliance on the determination of a magistrate or a legislature that the challenged search in fact met the standards required by the fourth amendment." United States v. Warner, 843 F.2d 401, 405 (9th Cir. 1988).

The significance of the "other-directed" search was stressed by the Court in Leon. This Court made the point that in a search warrant situation, the exclusionary rule could be modified somewhat without jeopardizing its ability to perform its intended functions. This was possible in the search warrant context because the search had been directed by a neutral and detached magistrate. Leon, 468 U.S. at 905. Under such circumstances, the exclusionary rule was deemed

to have negligible deterrent value upon law enforcement, and since deterrence is the purpose to be served by the exclusionary rule,[3] its application in such a situation was deemed unwarranted.

One should not minimize the significance of the "other-directed" aspects of the exceptions to the exclusionary rule for cases where the government seeks to admit unconstitutionally seized evidence in its case-in-chief. It is the essential component to the so-called "good faith" test. The Leon court itself acknowledged this when it noted that "good faith on the part of an arresting officer is not enough, and that if subjective good-faith alone were the test, protections would exist only in the discretion of the police." Leon, 468 U.S. at 915 n. 13. Thus, in the Leon situation, an

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[3] The Leon Court dealt with the deterrent effect of suppression on law enforcement officials as the only purpose to be served by the exclusionary rule. Although this has been the purpose most often discussed by this Court in recent opinions, this has not historically been the only reason for the exclusionary rule. While amicus asserts that applying the exclusionary rule to the facts of this case will have a deterrent effect on law enforcement authorities, amicus also invites the Court to reexamine the view that the only purpose to be served by the exclusionary rule is the narrow one of deterring law enforcement. See Yale Kamisar, Does (Did)(Should) the Exclusionary Rule Rest on a "Principled Basis" Rather Than on an "Empirical Proposition?", 16 Creighton L. Rev. 565, 565 n. 1 (1983)("Until the exclusionary rule rests once again on a principled basis rather than an empirical proposition, as it did originally and for much of its life, the rule will remain in a state of unstable equilibrium.")(emphasis in original).

essential component of the objective good-faith test is that objectivity is being supplied by the intervening magistrate.[4] This is what enabled the Court in Leon to hold that in the search warrant context, "the exclusionary rule can be modified somewhat." Leon, 468 at 905.

The importance of the presence of a neutral and detached magistrate as a justification for encroaching on the exclusionary rule has been recognized by many lower courts.[5] Additionally, even staunch supporters of the result

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[4] In Massachusetts v. Sheppard, 468 U.S. 981 (1984), the Court addressed the fact that the officers' conduct was objectively reasonable. Id. at 990. However, Sheppard involved reliance on not only a warrant, but on the magistrate's affirmative representations that the warrant had been altered to reflect correct information. The objective reasonableness at issue was the officer's reliance upon the magistrate's specific representations to him, as opposed to the directive of the warrant itself.

[5] See, e.g., United States v. Curzi, 867 F.2d 36, 44 (1st Cir. 1989)(good-faith exception for searches pursuant to warrant should be accepted precisely as formulated and not applied to warrantless searches); United States v. Merchant, 760 F.2d 963, 968-969 (9th Cir. 1985)(good-faith exception does not exist beyond warrant context); United States v. Wall, 807 F. Supp. 1271, 1277 (E.D. Mich. 1992)(Leon does not modify exclusionary rule where police acted without warrant); United States v. Boffman, 747 F. Supp. 1251, 1253-1254 (S.D. Ohio 1990)(narrow holding in Leon fact specific to search warrant situation and does not modify exclusionary rule for warrantless searches); People v. Mourecek, 566 N.E.2d 841, 845 (Ill. App. Ct. 1991)(Leon only applies to good-faith

reached by Leon have acceded to the view that "the good-faith exception has no place outside the warrant context, a context which provides unique intrinsic indicia of reliability about proposed searches." Donald Dripps, Living with Leon, 95 Yale L.J. 906, 909 (1986).

B. An Exception To The Exclusionary Rule Should Not Be Created For A Warrantless Search Conducted Pursuant To An Invalid Arrest

It is established law that the execution of an arrest pursuant to a warrant, or the execution of a warrantless arrest based upon probable cause, accords the arresting officer the right to conduct a search incident to that arrest. Chimel v. California, 395 U.S. 752, 762-763 (1969). Concomitantly, an arrest lacking in probable cause does not supply the necessary justification for a search. This is true whether the arresting officer is mistaken in his formulation of probable cause, or whether the arresting officer has been directed to effect the arrest by another officer who lacked sufficient information to supply probable cause. See Whiteley v. Warden, 401 U.S. 560, 568-569 (1971). Similarly, an arrest based upon a warrant that has been recalled is unlawful. People v. Ramirez, 668 P.2d 761, 764 (Cal. 1983); State v. Taylor, 468 So. 2d 617, 625 (La. Ct. App. 1985).

The exclusionary rule bars the admission of evidence seized pursuant to a search incident to an unlawful arrest. Whiteley, 401 U.S. at 569. Petitioner seeks the creation of an exception to the exclusionary rule when the officer executing the unlawful arrest does so in "good-faith." However, the adoption of such an exception would require a wholesale

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violations resulting from searches conducted pursuant to technically invalid warrants).

change in the way courts view warrantless searches pursuant to arrests that have no basis in probable cause. Many courts have already confronted this specific issue and held that a police officer's good faith belief he or she is acting reasonably in conducting a warrantless search pursuant to an unlawful arrest does not create an additional exception to the exclusionary rule.[6]

Courts that have confronted this issue have usually grounded their holdings on this Court's decisions in Whiteley and United States v. Hensley, 469 U.S. 221 (1985). The logic of this approach is inescapable. Hensley, decided one year after Leon, reaffirmed the validity of the constitutional precepts set out in Whiteley. Hensley, 469 U.S. at 230-231. The timing of these opinions has led one court to adopt the view that Hensley makes it clear Whiteley was not affected by Leon. See Ott v. State, 600 A.2d 111, 116 (Md. Ct. App. 1992). Although there is an argument that the Hensley Court

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[6] See, e.g., United States v. Warner, 843 F.2d 401, 405 (9th Cir. 1988); People v. Mourecek, 566 N.E.2d 841, 845 (Ill. App. Ct. 1991); Albo v. State, 477 So. 2d 1071, 1073 (Fla. Dist. Ct. App. 1985); People v. Ramirez, 668 P.2d 761, 764 (Cal. 1983); People v. Fields, 785 P.2d 611, 614 (Colo. 1990); People v. Jennings, 430 N.E.2d 1282, 1285 (N.Y. 1981); State v. Trenidad, 595 P.2d 957, 958 (Wash. Ct. App. 1979); but see United States v. Leon-Reyna, 930 F.2d 396, 400 (5th Cir. 1991)(good-faith exception applies to warrantless arrests); United States v. Towne, 870 F.2d 880, 885 (2d Cir. 1989), cert. denied, 490 U.S. 1101 (1989); Durio v. State, 807 S.W.2d 876, 878 (Tex. Crim. App. 1991); Childress v. United States, 381 A.2d 614, 618 (D.C. Ct. App. 1977); State v. Lanoue, 587 A. 2d 405, 407 (Vt. 1991); Commonwealth v. Riley, 425 A.2d 813, 816 (Pa. Super. Ct. 1981).

had no need to address the "good-faith" issue in reaching its decision, there is still validity to the basic point that one must look to the lawfulness of the underlying arrest to determine the admissibility of the evidence seized, rather than immediately analyze the warrantless search under some "good-faith" exception to the exclusionary rule.

Post-Leon cases have acknowledged the wisdom of determining the admissibility of evidence seized pursuant to a warrantless search incident to an arrest by examining the lawfulness of the underlying arrest, rather than by merely applying a "good-faith" test to the seizure. See, e.g., State v. Gough, 519 N.E.2d 842, 844 (Ohio Ct. App. 1986)(Whiteley applies rather than Leon when defendant arrested pursuant to invalidly issued bench warrant); Dean v. State, 466 So. 2d 1216, 1218 (Fla. Dist. Ct. App. 1985)(principles underlying Leon evoke different policy considerations than case involving unlawful arrest). Further, when assessing the lawfulness of the arrest, it is still appropriate to determine the issue by looking at the collective knowledge of the officers involved in the transmission and receipt of information pertaining to the arrest. See, e.g., People v. Mourecek, 566 N.E.2d 841, 845 (Ill. App. Ct. 1991)(good-faith exception not applicable where officer relying on electronically communicated information which turns out to be stale); People v. Joseph, 470 N.E.2d 1303, 1306 (Ill. App. Ct. 1984)(good-faith reliance of officer in acting upon information provided through police channels cannot overcome intrusion upon Fourth Amendment rights); Albo v. State, 477 So. 2d 1071, 1074 (Fla. Dist. Ct. App. 1985)(Leon has no effect where no judicial determination and arrest based wholly upon erroneous information supplied by law enforcement authorities).

In addition to these general principles, an arrest based upon a recalled warrant is one that certainly calls for the application of the exclusionary rule. In such a case, there has been an affirmative decision by a neutral magistrate that the defendant should not be arrested; yet, directly contrary to this independent decision, the defendant is arrested. Since the recall of the warrant conclusively demonstrates the lack of probable cause to arrest, People v. Ramirez, 668 P.2d 761, 764 (Cal. 1983), it is illogical to hold that the arresting officer can maintain a "good-faith" belief in the right to arrest. Such a holding flies in the face of the collective knowledge rule. Id. at 765 (collective knowledge rule imposes on officer obligation to disseminate only accurate information). A determination otherwise would serve to effectively destroy the vitality of Whiteley and Hensley.

C. The Constitution Protects Against Law Enforcement's Unlawful Interference With A Citizen's Rights Regardless Of The Origin Of The Information That Law Enforcement Relies Upon To Effect Its Unconstitutional Actions

Petitioner asks this Court to adopt an exception to the exclusionary rule based upon the fact that the original source of information relied upon by the officer may not have been a "law enforcement" agency. Such a rule would be an unacceptable formulation of constitutional doctrine and unworkable as a rule of constitutional law.

The constitutional principle advanced by petitioner seems to be the following: "If the collective knowledge of 'law enforcement' believes there to be probable cause for an arrest, the fact that this belief is erroneous due to a mistake emanating from an agency that has been denominated 'civilian' creates an exception to the exclusionary rule."

Following such a view invites the adoption of an even more simple approach by "law enforcement": denominate all record-gathering agencies "civilian" and don't worry about whether they ever update their records.[7]

The practice of making radio checks with centralized computer data banks is a routine practice in hundreds of thousands of cases nationwide. Baker v. McCollum, 443 U.S. 137, 155 (1979)(Stevens, J., dissenting). The risk of misidentification emanating from these computer checks is substantial. Id. at 155-156; see Maney v. Ratcliff, 399 F. Supp. 760, 764-765 (E.D. Wis. 1975)(factual recitation of repeated arrests of individual because information never withdrawn from NCIC).[8] The most common scenarios for

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[7] See, e.g., Albo v. State, 477 So. 2d 1071, 1076 (Fla. Dist. Ct. App. 1985)("A contrary holding--which would sanction evidence seized through the arrest of a citizen merely because he has once been legally subject to apprehension--would affirmatively encourage the careless, perhaps deliberately neglectful failure to delete names from the proscribed list on what would then be the correct theory that the longer the list, the more persons subject to search and the consequent seizure of admissible evidence."); see also State v. Gough, 519 N.E.2d 842, 846 (Ohio Ct. App. 1986)("We recognize that a law enforcement official placing a name on a list can be just as great a threat to liberty as one who batters down a door without a warrant.").

[8] There does not appear to be any published figure as to the extent of the inaccurate reporting in a data bank such as the NCIC, but a random survey by the FBI Identification Bureau revealed a large percentage of apprehended fugitives had not been cancelled from the data bank. Patrick

unlawful arrests pursuant to inaccurate entries in data systems are those situations where warrant information is improperly entered, or where a warrant was initially issued but subsequently recalled, and the warrant is not removed from the data system. See, e.g., United States v. Mackey, 387 F. Supp. 1121, 1123 (D. Nev. 1975); People v. Fields, 785 P.2d 611, 614 (Colo. 1990); People v. Mitchell, 678 P.2d 990, 991-992 (Colo. 1984); People v. Ramirez, 668 P.2d 761, 763 (Cal. 1983); State v. Trenidad, 595 P.2d 957, 957-958 (Wash. Ct. App. 1979).

The situation represented by the instant case is not uncommon. "[T]he situation here reflects the growing problem evolving from police reliance on electronically recorded and disseminated criminal files. When these computerized records are not kept up to date, a citizen may be subject to deprivation of his liberty without legal basis." People v. Joseph, 470 N.E.2d 1303, 1306 (Ill. App. Ct. 1984). Despite this truism, petitioner seeks to draw a distinction between the application of the exclusionary rule based upon whether the information that resulted in the unlawful deprivation of a citizen's liberty originated from a "law enforcement" or "civilian" agency. Proffering such a distinction misapprehends the nature of the harm and creates an artificial basis for distinguishing between "law

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Hand, Note, Probable Cause Based on Inaccurate Computer Information: Taking Judicial Notice of NCIC Operating Policies and Procedures, 10 Fordham Urb. L.J. 497, 498 n. 8 (1982). A survey of criminal history data systems indicated that only one in four dispositions was reported accurately and completely. See Donald L. Doernberg & Donald H. Ziegler, Due Process Versus Data Processing: An Analysis of Computerized Criminal History Information Systems, 55 N.Y.U. L. Rev. 1110, 1113 (1980).

enforcement" and "civilian" agencies when it comes to electronic data storage.

The distinction between "law enforcement" and "civilian" record-keeping clearly serves no purpose in analyzing the harm done to the citizen who has been unlawfully arrested. It makes no difference to that person who the agency of harm was; the harm has been rendered regardless of the miscreant. The only reason to create this artificial distinction between governmental agencies is for the purpose of defining an exception to the exclusionary rule. "The state should not benefit from compartmentalizing its responsibility to the public into separate but obviously interdependent agencies without some rationale to support this result." State v. Lanoue, 587 A.2d 405, 408 (Vt. 1991)(Morse, J., dissenting). The rationale for the distinction made by Leon is clear: the intervention of a neutral and detached magistrate helps to safeguard a citizen's rights. There is no comparable rationale to justify the distinction the petitioner seeks in this case.[9]

The distinction is also one that may prove to be illusory when an attempt is made to apply it to a particular fact situation. For example, two different jurisdictions have reached different conclusions as to whether the department of motor vehicles is a "law enforcement" agency. Compare

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[9] Amicus acknowledges that some courts have referred to the fact that it was a law enforcement agency that produced the inaccurate information. See, e.g., Albo v. State, 477 So. 2d 1071 (Fla. Dist. Ct. App. 1985); People v. Joseph, 470 N.E.2d 1303 (Ill. App. Ct. 1984). However, these courts note this distinction as an historical fact, and do not engage in reasoned discussion as to why this is or is not a determining factor in the result reached.

State v. Lanoue, 587 A.2d 405, 407 (Vt. 1991)(not law enforcement agency) with Albo v. State, 477 So. 2d 1071, 1075 n. 4 (Fla. Dist. Ct. App. 1985)(law enforcement agency). Additionally, it may not always be clear whether the origin of the information was from a "law enforcement" agency, or whether an otherwise "civilian" agency is serving a function typically associated with law enforcement. See, e.g., State v. Trenidad, 595 P.2d 957, 857-958 (Wash. Ct. App. 1979)(arrest based on civil bench warrant issued by Department of Social and Health Services). Further, what is the resolution if the incorrect information comes from both a "law enforcement" agency and a "civilian" agency?[10]

Even the fact situation represented by this case would yield different results in different jurisdictions if the petitioner's theory is adopted. The assumption in this case seems to be that the clerk of the justice court is a judicial branch employee. Assuming that to be true in this case, that is hardly a universal status for such clerks. In many jurisdictions the clerks are employed by a separate district or county clerk's office that is unconnected to the judicial branch. Further, in some jurisdictions the courtroom bailiff has responsibility for entering data of the type at issue here. We submit that the most important function served by this

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[10] For example, it has been noted that in Hamilton County, Ohio, an officer in a patrol car radios a license number to the dispatcher, who then enters it into a data terminal which displays all the information on file at the regional computer center and at the state and federal levels pertaining to the owner's criminal record. Doernberg and Zeigler, supra, n. 303, at 1174. It is not unlikely in this day and age that officers will have access to more than one data bank of information, and that the same information may come from both "law enforcement" and "civilian" data banks.

Court is to fashion broadly applicable rules of law that are based upon constitutional principles, and not rules that are dependent upon the whim of the way a state government or court chooses to classify particular agencies or employees. The fact that an exception to the exclusionary rule can only be advanced upon such haphazard distinctions augurs poorly for its application as a rule of law.

D. The Purpose Of The Exclusionary Rule is Furthered By Applying It Under The Facts Of This Case

The Leon Court noted that if the exclusion of evidence obtained pursuant to a subsequently invalidated warrant is to have any deterrent effect, it must alter the behavior of individual law enforcement officers or the policies of their departments. Leon, 468 U.S. at 918. It has been observed that the exclusionary rule presses police departments and state attorney's offices into a closer working relationship; thus creating an institutional deterrent effect. See Myron W. Orfield, Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts, 63 U. Colo. L. Rev. 75, 80 (1992).[11] The institutional deterrent effect of the exclusionary rule would be better served by not creating the exception being sought by petitioner.

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[11] During Senate hearings, Stephen Sachs, Attorney General of Maryland, testified that "[i]n my state Mapp has been responsible for a virtual explosion in the amount and quality of police training in the last 20 years." The Exclusionary Rule Bills: Hearings Before the Subcom. on Criminal Law of the Comm. of the Judiciary, United States Senate on S. 101, S. 751 and S. 1995, 97th Cong., 1st & 2d Sess. 41 (1982).

A logical interpretation of Leon is that the good-faith exception it created bears a rational relationship to the Fourth Amendment's preference for searches with warrants. By seeking the approval of a magistrate, and thus attempting to comply with the Fourth Amendment warrant requirement, law enforcement can avail itself of the good-faith exception. If deterrence of improper law enforcement activities is the sole goal of the exclusionary rule, the Leon exception makes sense when placed in this limited context, because it encourages an officer to invite an independent examination of his or her decision to search.

In the context of this case, the goal to be served by the exclusionary rule should be to encourage accuracy in record compilation by those agencies supplying computerized data to the criminal justice system.[12] "Suppressing the fruits of an arrest made on a recalled warrant will deter further misuse of the computerized criminal information systems and foster more diligent maintenance of accurate and current records." People v. Ramirez, 668 P.2d 761, 765 (Cal. 1983). The maintenance of accurate and current records is a key byproduct of the application of the exclusionary rule to the instant facts. The computer inaccuracy in this case, "even if unintended, amounted to a capricious disregard for the rights

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[12] Computerized information is no more accurate than data compiled manually, but because of the increased accessibility for computerized data, the effect of its inaccuracies is magnified. See Hand, supra, at 498; see also People v. Joseph, 470 N.E.2d 1303, 1306 (Ill. App. Ct. 1984)("[t]he situation here reflects the growing problem evolving from police reliance on electronically recorded and disseminated criminal files. When these computerized records are not kept up to date, a citizen may be subject to a deprivation of his liberty without any legal basis.").

of the defendant as a citizen of the United States." United States v. Mackey, 387 F. Supp. 1121, 1125 (D. Nev. 1975). Further, although petitioner advances the view that the deterrent goal of the exclusionary rule may not be advanced in this case since the inaccuracy originated with a "civilian" agency, the passive recipient theory has been rejected when previously proffered, and it has been held that law enforcement has some duty to insure the accuracy of information it eventually disseminates. Id. at 1123.

There has been no demonstration by petitioner that applying the exclusionary rule in this case fails to serve the deterrent effect of helping to combat inaccurate computerized record keeping of criminal data.[13] The exclusionary rule goal of acting as a systemic deterrent was not rejected by the Leon Court. It merely observed that to the extent the exclusionary rule was thought to operate as a systemic deterrent on a wider audience than law enforcement, it would not operate as such for judicial officers. Leon, 468 U.S. at 917. There is a well-established belief for this due to the role of the independent magistrate in our justice system. However, there is no well-established role for other functionaries that would be covered by a broad rule that exempts all non-law enforcement agencies from the exclusionary rule. In fact, many "civilian" agencies, such as the department of motor vehicles, play a role much more akin

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[13] The goal to be served is encouraging the accuracy of criminal data that is used by arresting officers, no matter the source of its origination or where it is stored. Courts have recognized this goal by holding that the proper inquiry is whether inaccurate information has been left in the criminal justice system records through the fault of the system. Pesci v. State, 420 So. 2d 380, 382 (Fla. Dist. Ct. App. 1982); People v. Jennings, 430 N.E.2d 1282, 1283 (N.Y. 1981).

to that of a law enforcement agency than to the role played by an independent magistrate.

Finally, before the Court crafts an additional exception to the exclusionary rule, one must consider the broader implications of the proposed exception. It is of great significance that the proposed exception relates to an already created exception to the general search warrant requirement; an exception that exists only because of the assurance that an arrest has been made based upon probable cause. In a world where warrantless searches incident to arrest "outnumber manyfold searches covered by warrants,"[14] creating an exception that permits the government to introduce evidence seized without a warrant, based upon an arrest lacking in probable cause, is turning a blind eye to the constitution.[15]

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[14] See Telford Taylor, Two Studies in Constitutional Interpretation 48 (1983).

[15] See Dripps, supra, at 944 ("[A] good faith exception for warrantless searches risks trivializing the constitution."); see also Philip Soper, A Theory of Law 87 (1984)("The seriousness of the obligation is directly proportional to the seriousness, as indicated by the severity of the attached sanctions, with which those who demand other's compliance will view disobedience.").

CONCLUSION

The judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted.

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